TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~304.~~ 105

THE NEW HAVEN STEAM TRANSPORTATION COMPANY, LIBELANT, APPELLANT,

vs.

THE STEAMBOAT "CONTINENTAL," THE NEW HAVEN STEAMBOAT COMPANY, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

FILED NOVEMBER 22, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 304.

THE NEW HAVEN STEAM TRANSPORTATION COMPANY, LIBELANT, APPELLANT,

vs.

THE STEAMBOAT "CONTINENTAL," THE NEW HAVEN STEAMBOAT COMPANY, CLAIMANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

INDEX.

	Original.	Print.
Authentication of clerk of circuit court	1	1
Libel	2	1
Exhibit, schedule of cargo	11	4
Libelant's stipulation for costs	17	7
Monition	19	7
Return on monition	21	8
Claim	21	8
Claimant's stipulation	22	9
Stipulation of indemnity on release of vessel	23	9
Consent to value	25	10
Order for delivery of vessel to claimant	26	10
Answer	26	11
Replication	34	13
Evidence for libelant:		
Joseph E. Stannard	34	13
Joseph E. Stannard cross-examined	39	15
Arthur Mellon	39	15
Arthur Mellon cross-examined	41	16
Walter C. Post	41	16
Walter C. Post cross-examined	43	17
Martin Higgins	44	17
Martin Higgins cross-examined	45	17
Edgar Beach	45	17
Corydon L. Combs	46	18
Wales French	47	18
John Adams	47	18

	Original.	Print.
Evidence for libelant—Continued:		
David Lewis	48	18
David Lewis cross-examined	48	19
Alpheus W. Snow	49	19
Richard Lane	49	19
Evidence for claimant:		
David G. Horton	50	19
David G. Horton cross-examined	51	19
William S. Grant	52	20
William S. Grant cross-examined	53	20
Frederick W. Mills	54	21
Frederick W. Mills cross-examined	56	21
Henry W. Starr	57	22
Franklin Peck	58	22
Franklin Peck cross-examined	59	22
William T. Smith	59	23
Peter A. Woolgamarth	60	23
Peter A. Woolgamarth cross-examined	60	23
John G. Bowns	61	23
John G. Bowns cross-examined	63	24
Libelants resume:		
Jerome B. Lucke	65	25
Jerome B. Lucke cross-examined	66	25
Decision	66	25
Decree	72	27
Notice of appeal from district court	72	27
Petition of appeal from district court	72	27
Stipulation upon appeal from district court	74	28
Record of circuit court	76	28
Decree in circuit court	77	29
Appeal from circuit court	78	30
Bond on appeal from circuit court	79	30
Citation	82	31
Acknowledgment of service	82	31
Petition of appeal	83	31

I, Loren P. Waldo, clerk of the circuit court of the United States within and for the second circuit, and district of Connecticut, do certify that the following transcript, from the 7th to the 196th folio, inclusive, is a true copy of the original libel, answer, pleadings, deposition, evidence, proceedings, and decrees in this court in the case of The New Haven Steam Transportation Company against The Steamboat Continental, appearing of record and on file therein.

In testimony whereof I have set hereto my hand officially, and the seal of said court, at Hartford, in the district aforesaid, this 25th day of October, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States the ninety-fifth.

Attest:

[SEAL.] LOREN P. WALDO, *Clerk.*

2 United States district court, district of Connecticut.

THE NEW HAVEN STEAM TRANSPORTATION Company
vs.
THE STEAMBOAT CONTINENTAL.

Libel.

To the honorable William D. Shipman, judge of the United States district court for the district of Connecticut:

The libel and complaint of The New Haven Steam Transportation Company, a corporation duly established under the laws of the State of Connecticut, and located at New Haven, in this district, in their own behalf, as owners of the steam propeller Northampton, her engines, boilers, tackle, apparel, & other furniture, & as bailees having the possession of the cargo on board of said propeller, on the passage hereinafter mentioned, and also for and in behalf of the owners of, and the persons interested in, such cargo, against The Steamboat Continental, her boilers, engines, tackle, apparel, and other furniture, and against all persons intervening for their lawful interest therein, in a cause of collision; and thereupon the libellants allege and articulately propound as follows:

I. That, before and at the time of the collision hereinafter mentioned, the libellants were the owners of the said propeller Northampton,

3 being of the burthen of tons, with her engines, boilers, machinery, tackle, apparel, and other furniture, and at the time of said collision were entitled to the freight upon the cargo then on board of her, and in course of transportation.

II. That the libellants, at the time of said collision, were employing, and for long before that time had employed, the said propeller in the transportation of passengers and freight between the ports of New Haven and New York, between which ports she was regularly run daily, for the purposes aforesaid; usually leaving New York every other day at six o'clock p. m., and arriving at New Haven between one and two o'clock a. m., and that, at said time, the said steamboat Continental, being of the burthen of tons, was also employed by her owners in the daily transportation of passengers and freight between the same ports, usually leaving her dock at New Haven on her trip to New York between the hours of eleven o'clock, p. m., and one o'clock a. m.

III. That the said propeller left her dock in New York on the 22nd day of October, 1868, at about six o'clock p. m., on her regular trip to New Haven, being in charge of her master, J. E. Stannard, and having on board several passengers, and a large and valuable cargo of merchandise, and being staunch and strong, and in all respects well supplied, officered, manned, and equipped for said trip; and that afterwards, while in the lawful prosecution of her said trip, at about ten minutes past one o'clock a. m., of the 23d, while off the harbor of New Haven, she was run into and sunk by the said steamboat Continental, as hereinafter more particularly stated.

IV. That the circumstances of said collision, as the libellants are informed and believe, were substantially as follows:

At about 12. 45 a. m. of said 23d day of October, said propeller had arrived in the course of her aforesaid trip, in sight of New Haven light, and had already shaped her customary course for said light, the light bearing E. N. E., and about five miles off. The weather was somewhat cloudy, but not unfavorable for seeing lights at ordinary distances, and the wind moderate from the northward. The captain and pilot of the propeller were at her wheel, and a proper lookout forward; and she was provided with a white light on her stem, and another on the flag-staff at her stern; a green light on her starboard side, and a red light on her port side, said last-mentioned lights being provided with the usual shade-boxes, and all said lights being arranged as required by the act of Congress in that case provided. The lights of a steamer coming down the harbor of New Haven were seen off the port bow of the Northampton by the lookout forward, and the captain and pilot in the wheel-house, and were then supposed to be, as they subsequently proved to be, the lights of the steamboat Continental, before mentioned, which steamboat had not long before left her dock at New Haven, on her usual trip to New York. Shortly after the Continental was thus seen, and while the Northampton was following her course before mentioned, the Continental being then about three miles off, and about a point off the Northampton's port-bow, and having cleared the shoal ground at the mouth of New Haven Harbor, hauled up on her sound course for New York, which brought her head directly toward the Northampton. She very soon changed her course a little southerly, but it was apparent on board the Northampton that the vessels, upon those courses, would come near each other; and, therefore, the course of the Northampton was altered about one point easterly, so as to pass to the right or on the larboard side of the Continental, and that course was kept up until the vessels had approached within a half to three-quarters of a mile of each other—the Continental being on the port bow of the Northampton—when the Northampton blew one blast of her steam-whistle to signalize to the Continental that she should pass to the right or on the larboard side of the Continental. The signal was not immediately answered by the Continental, but as the boats were in their usual tracks, and should be well known to each other, and especially as the Continental had on several occasions theretofore, not replied to the signals of the Northampton, although in full hearing of them, the failure to respond promptly was not regarded by those in charge of the Northampton as indicating anything else than that the Continental would pass to the right, as, from the position of the vessels, even without any signal, she was bound to do, and as there was nothing to prevent her from doing. But finding that the Continental did not indicate in any manner any such change of course, as would have been proper if she had determined to pass to the right, the Northampton was

about to repeat her signal of one whistle, when the Continental gave two blasts of her steam-whistle, and sheered to the southward. But the boats were then so close that the Northampton could not with
7 prudence have passed to the left or on the starboard side of the Continental, and she at once repeated her blast of one whistle, put her helm hard aport, and stopped her engine.

But, notwithstanding these precautions, the Continental came into her, head on, striking her on her larboard side amidships, cutting through her guards, and penetrating half through her decks, breaking her steam-pipe, by the escape of steam from which several on board were scalded, and causing her to sink in about twenty-five minutes thereafter, in three-and-a-half fathoms water, with all her cargo on board.

V. That the Continental should have passed to the right and on the larboard side of the Northampton, as there was plenty of room for her to do, and as she was bound to do; that when the single whistle was blown by the Northampton it was the duty of the Continental to have ported her helm in time to have passed to the right, as she could easily have done; or if, in the judgment of those in charge of her, such course was not practicable or prudent, to have promptly signalized to the Northampton a different intention; that if the signal-whistle of the Northampton was not heard by the Continental it could only have been by gross inattention on her part; and if not so heard, and it was the intention of the Continental to pass to the left or on the starboard
8 side of each other, it was the duty of those in charge of her to have signalized such intention to the Northampton in season for the Northampton to have governed herself accordingly; that when the Continental blew her two whistles the boats could not have passed with safety on the starboard side of each other, but it was, even then, practicable for them to have passed safely on the port side of each other, and if the Continental had at that time ported her helm the collision would have been avoided; that no timely efforts were made by those in charge of the Continental to avoid the collision, but she was carelessly, negligently, and wrongfully run into and upon the Northampton, causing the damages aforesaid; and that said collision was not caused by any fault or neglect of those in charge of, or navigating the Northampton, but solely by and through the neglect, inattention, and improper navigation of those in charge of the Continental.

VI. That the cargo on board said propeller when she went down, as before mentioned, consisted of merchandise, particularly described in the schedules hereto annexed, which was owned by the several parties in said schedule mentioned as the consignees thereof, for whom the
9 libellants were transporting the same on freight, and who have respectively authorized the libellants, as common carriers thereof, to institute and prosecute this action to recover the damages thereto; that by reason of said collision the libellants have been put to great expense in their efforts to raise & recover the same, and to protect, recover, and save said cargo from loss, and if said vessel is recovered, they will be put to very large expense for the repair of the same; but the amount and particulars of their damage in respect of the injuries to said vessel, cannot as yet be correctly stated; that the libellants have lost the freight upon a large portion of said cargo, and in addition thereto have lost the use of their vessel for a long time, if she shall be recovered in a state to be repaired, and have sustained damages for the hire and expenses of a steamboat to supply her place, and that the entire damage sustained by, and in consequence of, the collision, will, as they believe, exceed in the aggregate the sum of one hundred thousand

dollars, which the libellants claim to recover in this action, and which the owners of the Continental have been requested to adjust and settle, but which they refuse so to do.

VII. That the said steamboat is now within this district, and
10 within the jurisdiction of this court, and that all and singular the premises are true and within the admiralty and maritime jurisdiction of this court.

Wherefore, the libellants pray that process, in due form of law, according to the course and practice of this court in cases of admiralty and maritime jurisdiction, may issue against the said steamboat Continental, her engines, tackle, apparel, & furniture, and that the same may be attached and held to answer the damages which may be awarded to the libellants for the causes aforesaid, and that all persons having any interest therein may be cited to appear and answer all and singular the premises, and that this honorable court would be pleased to pronounce for the damages aforesaid, and to decree to the libellants such damages as to law and justice may appertain, and that said steamboat, her engines, &c., may be condemned and sold to pay the same, and that the libellants may have such other and further relief as may be just and right.

The New Haven Steam Transportation Company,
By C. R. INGERSOLL,
Their Attorney.

11 Sworn to by the said C. R. Ingersoll, according to his best knowledge and belief, at New Haven, the 11th day of December, 1868, before

ALFRED BLACKMAN,
United States Circuit Court Com'r, District of Connecticut.

J. S. BEACH,
C. R. INGERSOLL,
Proctors for Libellants.

Schedule of cargo on board the propeller Northampton at the time of the collision, referred to in the foregoing libel.

Cargo.	Name of consignee.	Residence.
25 bags meal	D. B. Crittenden	New Haven.
100 " "	J. G. Chapman	"
20 cases s'g mach's	Singer M'f'g Co	"
1 cask zinc	R. J. Munson	"
2 bbls. gal. iron	"	"
3 " glue	C. Atwater	"
1 hhd. hams	R. Stevens	"
3 bbls. sugar	Yale & Bryan	"
1 hhd. crockery	Minor & Co.	"
1 tierce "	"	"
150 bags meal	M. & P. Egan	"
1 case tobacco	Mrs. Rahn	"
1 box "	"	"
12 2 bbls. "	"	"
5 hlf. " "	"	"
5 bbls. sugar	M. Zunder & Co.	"
2 " "	"	"
16 boxes mdse	"	"
2 hlf. chests tea	"	"
2 bags coffee	"	"
8 bbls. liquor	"	"

Schedule of cargo, &c.—Continued.

Cargo.	Name of consignee.	Residence.
18 bbls. ale	(B.) Bradford	"
2 reals oilcloth	James Devine	"
1 " carpet	"	"
1 bale mats	"	"
2 " pillows	"	"
1 case "	"	"
15 mattrasses	"	"
23 sack, salt	Bushnell & Dewell	"
20 boxes soap	"	"
10 bbls. kerosene oil	"	"
277 bbls. flour	Smith Cladwin	"
5 " kerosene oil	G. F. Peterson	"
25 kegs lead	"	"
1 bbl. liquor	L. Maudlebaum	"
1 " rice	"	"
1 " sugar	"	"
1 " nuts	"	"
1 box starch	"	"
6 " mdse	"	"
13 3 rolls paper	"	"
1 keg mustard	"	"
4 bags nuts	"	"
1 half ch. tea	"	"
3 bbls. apples	"	"
2 " mdse	"	"
1 crate grapes	"	"
5 boxes mdse	"	"
2 mats "	"	"
1 bag "	"	"
1 keg "	"	"
1 box cheese	"	"
7 rolls paper	A. O. Coburn & Co	"
63 firkins butter	A. Hotchkiss & Co	"
1 cask drugs	Noyes & Shepard	"
3 boxes "	"	"
2 " fish	A. Foot	"
6 kegs spikes	Hotchkiss & Mersick	"
48 bars iron	"	"
16 bags flour	H Kimberly	"
1 iron safe	Thomson & Co	"
1 stove base	W. H. Ray	"
3 pcs. castings	"	"
4 bbls. liquor	A. P. Hotchkiss	"
19 pcs. steel	New Haven M'f'g Co	"
11 cases "	Winchester & Davis	"
1 case tobacco	L. E. Braley	"
14 1 cask nutmegs	Benjamin, Peck & Kellam	"
2 cases tobacco	"	"
2 boxes "	"	"
10 " yeast	"	"
10 hlf. bbls tobacco	"	"
1 cask chickory	"	"
1 box "	"	"
50 bags oats	N. M. Beach	"
10 " meal	"	"
10 " corn	"	"
1 box	J. H. Klock	"
1 bbl. starch	H. H. Snow	"
1 box	E. Malley	"
21 bbls. sugar	Tyler & Frost	"
10 boxes soap	"	"
1 case	Sargent & Co	"
6 boxes soap	P. B. Beebe	"
5 " "	S. Merwin & Son	"

Schedule of cargo, &c.—Continued.

Cargo.	Name of consignee.	Residence.
12 " "	D. S. Cooper & Son	"
15 " "	C. H. Oaks	"
10 " saleratus	A. F. Barnes	"
1 case	M. Cohn	"
11 bags meal	G. K. Whiting	"
5 " corn	"	"
16 " oats	"	"
16 " feed	"	"
1 buckwheat	"	"
15 19 bbls. liquor	F. McGinn	"
10 " ale	"	"
2 boxes drugs	G. Smith, jr.	"
4 " glass	Lewis & Beacher Co	"
5 bbls. flour	E. J. Gorham	"
3 " "	D. Ashmond	"
10 " "	C. Schligel	"
183 pcs. lumber	Mathieshek Piano Co.	"
3 bbls. liquor	J. Blake	"
16 dressed sheep	H. Clayton	"
1 anchor	C. Hyde	"
1 pa. bdl	"	"
1 firkin butter	H. Bretham	"
3 bbls. apples	"	"
1 " vinegar	"	"
1 tub butter	J. N. Hoffman	"
1 " "	J. F. Davis	"
2 bbls. apples	"	"
2 hlf. ch. teas	"	"
2 bbls. apples	J. Hollis	"
3 " "	L. V. Treat	"
10 kegs nails	F. S. Bradley	"
6 sets wheels	Wyman & May	"
1 pa. roll	H. Fitch	"
1 box	Judd & White	"
10 sacks potatoes	J. & G. Smith	"
3 cases	Camp & St. John	"
16 7 boxes tin	W. T. Cannon	"
5 stoves	J. Cudworth, jr.	"
1 package castings	"	"
10 bags oats	H. Trowbridge, 2d	"
3 cases	J. W. Duncan	Madison, Ct.
2 bales	"	"
50 bags nitrate soda	Cushings, Porter & Co	Westfield, Mass.
20 kegs lead	F. J. Smith & Co	Collinsville, Ct.
28 " "	Tryon & Sanford	Unionville "
5 cases	Union Nut Co	" "
7 bbls. sugar	S. B. King	Plainville "
10 " flour	C. Edwards	Northampton, Mass.
1 bell	Cong'l Society	Wolcottville, Ct.
1 frame	"	" "
1 wheel	"	" "
7 boxes	H. Fairbanks	St. Johnsburg, Vt.
1 cask	"	" "
5 bbls. kerosene oil	W. Konold	Collinsville, Ct.
10 boxes tin	Hull & Stafford	Clinton, "
1 case copper	"	" "
4 bales pap. stock	Clinton Paper Co	" "
6 bbls. flour	J. Andrews	" "
10 hlf. bbls. flour	"	" "
5 bbls. flour	S. E. Pardee	Westbrook.
1 bbl. oil	C. C. & Co	Centerbrook.
8 bbls. apples	R. C. Butler	Meriden.
1 cask potash	E. Miller	"
2 bbls. yeast	S. H. Thomas	"

Schedule of cargo, &c.—Continued.

	Cargo.	Name of consignee.	Residence.
17	2 bbls. turpentine	S. C. Parsons	Northampton, Mass.
	5 boxes mdse	L. Morton	"
	3 boxes spice	J. S. Parsons	"
	3 bbls. tobacco	"	"
	3 boxes spice	Field & S.	"
	2 caddies tea	"	"
	4 boxes spice	H. S. Cutter	Florence, Mass.
	1 keg	"	"
	1 bbl. tobacco	"	"
	1 box coffee	E. S. Ross	Leeds, "
	1 bbl. tobacco	"	"
	1 hlf. "	"	"
	1 case	Mr. Stern	Swanton, Vt.
	2 bbls. apples	H. Buckingham	New Haven.
	1 bbl. ale	T. Furlong	"

District court of the United States for the district of Connecticut.

Stipulation.

Whereas a libel was filed in this court on the 12th day of December, 1868, by the New Haven Steam Transportation Company & against The Steamboat Continental, her engines, boilers, tackle, &c., in a cause of collision, for the reasons and causes in said libel mentioned,
18 and praying process against the said steamboat & co., and Herrick P. Frost, of New Haven, surety; and the said libellants, the parties hereto consenting and agreeing that, in case of default or contumacy on the part of the libellants or his surety, execution may issue against their goods, chattels and lands for the sum of two (2) hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, jointly and severally bound in the sum of two hundred dollars, conditioned that the libellants above named shall pay all such costs as shall be awarded against them by this court, or, in case of appeal, by the appellate court.

The New Haven Transportation Company,
By C. R. INGERSOLL,
Their Attorney.
HENRICK P. FROST.

Taken and acknowledged this 12th day of December, A. D. 1868, before me.

ALFRED BLACKMAN,
Com'r U. S. Cir. C't, Dist. of Conn.

19 District of Connecticut.

{ SEAL OF THE DISTRICT COURT OF CONNECTICUT. } The President of the United States of America to the marshal of the United States for the district of Connecticut:

Whereas a libel has been filed in the district court of the United States for the district of Connecticut, on the 12th day of December,

1868, by the New Haven Steam Transportation Company against The Steamboat Continental, her engines, boilers, machinery, tackle, apparel, & furniture, in a cause of collision, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of said court in that behalf to be made; and that all persons interested in the said steamboat, her engines, &c., may be cited in general and special to answer the premises, and, due proceedings being had, that the said steamboat, her engines, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are hereby commanded to attach the said steamboat, her engines, &c., and to detain the same in your custody until the further order of court respecting the same, and to give due notice to all persons claiming the same or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of said libel, that they be and appear before the said court to be held at Hartford, in and for the said district, on the first Monday of January, 1869, at 11 o'clock a. m. of said day, then and there to interpose a claim for the same and make their allegations in that behalf. And what you have done in the premises do you then and there make return thereof together with this writ.

Witness the Hon. William D. Shipman, judge of said court at Hartford, in said district, this 14th day of December, A. D. 1868.

LOREN P. WALDO,
Clerk of said Court.

C. R. INGERSOLL,
Proctor for Libellants.

UNITED STATES OF AMERICA,
District of Connecticut, ss:

NEW HAVEN, *Dec. 16th*, 1868.

In obedience to the within monition, I attached the steamboat Continental, her engines, boilers, machinery, &c., tackle, apparel, furniture, &c., and I have given due notice to all persons claiming the same, that this court will, on the first Monday in January, 1869, proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Attest:

JOHN GOULD,
U. S. Marshal for the Dist. of Conn't,
By P. R. CARLL,
His Deputy.

Fees.—Service, 2 00; custody, 3 00; return to c't, 2 40; advertising libel, 8 00—$15 40.

Claim.

To the Honorable William D. Shipman, judge of the United States district court for the district of Connecticut:

The New Haven Steamboat Company, a corporation incorporated by law of the State of Connecticut, and located in New Haven, in said State, owners of the steamboat Continental, her engines, boilers, machinery, tackle, apparel, & furniture, intervening for their interest in the said steamboat, her engines, boilers, machinery, tackle, apparel, & furniture, appears before this honorable court, and claim the said

22 steamer, her engines, &c., and state that they are the true and bona fide owners thereof, and that no other person is the owner thereof. And thereupon the said claimants pray that this honorable court will be pleased to decree a restitution of the same to them, and otherwise right and justice to administer in the premises.

New Haven Steam B. Co.,

By RICHARD PECK,
Their Agent.

Sworn this 17th day of December, 1868, before me.

C. R. INGERSOLL,
U. S. Commissioner.

Claimant's stipulation.

District court of the United States for the district of Connecticut.

Whereas a libel was filed in this court on the 12th day of December, 1868, by The New Haven Steam Transportation Company against The Steamboat Continental, her boilers, &c., for the reasons & causes in said libel mentioned, & whereas a claim has been filed in said court by The New Haven Steamboat Company, and the said The New Haven Steamboat Company and Charles H. Northam, their surety, the parties hereto, hereby consenting that in case of default or contumacy on the
23 part of the claimants or his sureties, execution to the amount of two hundred and fifty dollars may issue against their goods, chattels, and lands:

Now, therefore, it is hereby stipulated & agreed for the benefit of whom it may concern, that the stipulators undersigned are, and each of them are hereby, bound in the sum of two hundred and fifty dollars, conditioned that the claimant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or, upon appeal, by the appellate court.

New Haven Steamboat Co.,

By RICHARD PECK,
Their Agent.

C. H. NORTHAM.

Taken and acknowledged this 17th day of December, 1868, before me.

C. R. INGERSOLL,
U. S. Com'r.

Stipulation of value of vessel.

District court of the United States for the district of Connecticut.—In admiralty.

Whereas a libel was filed on the 12th day of December, A. D.
24 1868 by The New Haven Steam Transportation Company against The Steamboat Continental, for the reasons and causes in the said libel mentioned, and whereas the same is now in custody of the marshal, under the process issued in pursuance of the prayer of said libel, and is of the value of one hundred and twenty thousand dollars, as appears by a consent now on file in said court, and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimant or his sureties, execution may issue against their goods, chattels, and lands:

Now, therefore, it is hereby stipulated for the benefit of whom it may concern, that the stipulators undersigned, and each of them, is bound in the sum of one hundred and twenty thousand dollars, conditioned that they shall at any time upon the interlocutory and *and* final order and decree of said district court, or of any appellate court to which the above-named suit may proceed, and upon notice of such order or decree to said claimant or his proctor, pay into court the full value aforesaid, and abide by, and pay the money awarded by, the final decree rendered by this court, or the appellate court, if any appeal intervene.

New Haven Steamboat Co.,

By RICHARD PECK,
Their Agent.

RICHARD PECK.
C. H. NORTHAM.

Taken and acknowledged this 17th day of December, 1868, before me.

C. R. INGERSOLL,
U. S. Com'r.

Consent to value.

U. S. dist. c't.—In admiralty.

THE NEW HAVEN STEAM TRANSPORTATION Company
vs.
THE STEAMBOAT CONTINENTAL.

It is hereby consented and agreed by the parties in the above-entitled suit, that the value of said steamboat Continental, her engines, boilers, machinery, tackle, apparel, and furniture, is, and may be taken to be, one hundred and twenty thousand dollars, at least.

New Haven, December 17th, 1868.

New Haven Steamboat Co.,

By DOOLITTLE & BRONSON,
Their Attorneys.

The New Haven Steam Trans. Co.,

By C. R. INGERSOLL,
Their Attorney.

Order for delivery of vessel to claimant.

U. S. dist. c't.—In admiralty.

THE NEW HAVEN STEAM TRANSPORTATION CO.
vs.
THE STEAMBOAT CONTINENTAL.

It appearing that a stipulation has been filed in this case for the agreed value of the steamboat arrested under the process issued in pursuance of the prayer of the libel, it is ordered that the said steamboat Continental, her engines, boilers, machinery, tackle, apparel, and furniture be delivered by the marshal to the claimant, The New Haven Steamboat Company.

W'M D. SHIPMAN,
Judge.

Answer of claimants.

To the Honorable William D. Shipman, judge of the district court of the United States for the district of Connecticut:

The answer of The New Haven Steamboat Company, claimants
27 of the steamboat Continental, her boilers, engines, &c., to the libel & complaint of The New Haven Steam Navigation Company against the said steamboat, her boiler, &c., and against all persons intervening for their interest therein, in a cause of collision, alleges and articulately propounds as follows:

First. The claimants admit that before and at the time of the collision in the libel and hereinafter mentioned, the libellants were the owners of the propeller Northampton, and entitled to the freight upon her cargo as alleged in the first article of the libel.

Second. The claimants also admit that at the time of the collision, and previous thereto, the libellants had employed and were employing the said propeller in the transportation of freight and passengers between New Haven and New York, making regular trips, leaving New York every other day at about 6 o'clock p. m., and arriving at New Haven between one and two o'clock the next morning; and that the steamboat Continental was also employed by these claimants in the transportation of freight and passengers between the same places, leaving New Haven at different times from eleven o'clock p. m. to one
28 o'clock a. m., of each day, as is in these respects alleged in the second article of said libel.

Third. These complainants also admit that the propeller left New York on the 22d of October, 1868, at about her usual time, on one of her regular trips to New Haven, with freight & passengers; and that afterwards, while in the prosecution of her said trip, and between one and half-past one o'clock the next morning, a collision occurred between her and the said steamboat, whereby the said propeller was sunk, but they deny that the propeller had on board at the time a large and valuable cargo of merchandise, or that she was staunch, strong, and in all respects supplied, officered, manned, and equipped for the said trip; or that she was run into and sunk by the said steamboat, as alleged in the third article of the said libel.

Fourth. The claimants deny that the circumstances of the collison are correctly stated and set forth in the fourth article, or elsewhere in the said libel. They deny that the captain and pilot of the propeller were at her wheel, or that there was a proper lookout forward, or that the propeller was provided with or that she then and there carried a white light on her stem and another on her flag-staff at her stern; but
29 they admit that she carried a red light on her port side and a green light on her starboard side; that the weather was cloudy, but not unfavorable for seeing lights at ordinary distances, and that the wind was moderate from the northward. They also admit and say that while the steamboat was coming down from New Haven, and before she hauled up on her sound course she might have been seen, and probably was seen, off the port bow of the propeller, but they deny that at any time after she was hauled up on her sound course, if the propeller was heading, as alleged, east-northeast, she was seen, or that she was a point off the propeller's port bow, or that she was approaching directly toward the propeller. On the contrary, the claimants aver that at all times after the steamboat had hauled up on her sound course until the propeller changed her course, as in the libel and hereinafter stated, she was well off the propeller's starboard bow,

so that if she had continued on her course as she should have done, the vessels would have passed on the starboard side of each other at a safe and proper distance. The claimants further admit and say that when the propeller approached very near, the steamboat being still on
30 her starboard side, she suddenly and unexpectedly gave one blast of her steam-whistle, and shortly before or immediately thereafter, without waiting for any response, improperly and wrongfully put her helm to port, attempted to cross the steamboat's bow, and to pass on her port side. They further say that the propeller's signal-whistle so given was immediately and promptly answered by two blasts from the steamboat, indicating that it was not practicable for the propeller, in her relative situation and under the circumstances, to cross over or pass on the port side of the steamboat, and they deny the allegations of the libel in any wise to the contrary. They also deny that upon giving such response the wheel of the steamboat was put to the starboard, or that she sheered to the southward; but, on the contrary, they aver that upon observing that the propeller had ported her helm and changed her course, the wheel was immediately ordered and put to port and the engines stopped, in order, if possible, to avoid the collision, which at that time appeared to be inevitable. They also deny that the propeller responded to the said steamboat's signal with one blast, or that she thereupon stopped her engine; but they aver that if she did so
31 it was not until the moment of collision, and that she thereby improperly adhered to her wrongful attempt to cross the steamboat's bow. They admit and say that having so unexpectedly and wrongfully ported her helm, and placed herself in the way of the steamboat, she did strike her on the port side, somewhere about midships, a square blow, nearly or quite at right angles with her keel, causing her to sink, with all her cargo.

Fifth. The claimants deny that the steamboat should have passed to the right and on the port side of the propeller, or that when the first signal whistle was blown by the propeller it was the steamboat's duty, or that she could have ported her helm and passed to the right; but they aver nevertheless, that the wheel was ported, and the fact that it was not practicable for the propeller to cross over and pass on her port side was promptly signalized to the propeller. They deny that it was the duty of the steamboat to have signalized her intention to pass on the starboard side of the propeller, in season for the propeller to have governed herself accordingly, or that when the steamboat gave the two blasts of her whistle, or even when the propeller gave her single blast, it was practicable to have passed on the port side of the propeller, or that by porting her helm the collision would or could have been avoided. The claimants further say that, before the pro-
32 peller changed her course to cross the steamboat's bows, she was not so approaching as to require a signal from either; but if otherwise, and if any signal was required, it should have been a signal to go to the left; and under the circumstances, it was the duty of the propeller to have given two blasts of her whistle instead of one, and kept along on the starboard side of the steamboat. They further say that, if the steamboat should have signalized the propeller as alleged in the libel, (which is not admitted,) still she was excused from so doing, because, as they aver, the propeller was running in violation of law, without having all her lights properly set and burning, in consequence of which the lookout and those navigating the said steamboat supposed, and had good reasons to suppose her to be a sailing vessel, which the steamboat might pass without signals, and the fact that she was

a propeller approaching, was not known, and could not known by them until she sounded her first signal whistle. ants further aver, that the said propeller was then and there in violation of law, without having any stern light properly set ing; without having any lookout properly stationed and carefully attending to that duty, and without being otherwise properly
33 manned, equipped, or navigated, and that the collision was in fact caused thereby, and by the carelessness, negligence, inattention, and improper navigation of those in charge of the propeller and not otherwise; and these claimants deny, each and every allegation of the libel not herein admitted, and which is in any wise contrary to the averments and statements herein before contained.

Sixth. The claimants have no knowledge or information in respect to the kind, quality, amount, or value of the cargo, nor who were the owners or consignees thereof, nor whether or not the same was totally lost, and they accordingly deny the several allegations of the sixth article of the libel.

Seventh. The claimants admit that the said steamboat was at the time of the commencement of this action, within the jurisdiction of this court; that all and singular the premises herein contained are true; in verification whereof, if desired, the claimants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the claimants pray that this honorable court will be pleased to pronounce against the libellants, and that the libel may be dismissed with costs.

34 The New Haven Steamboat Co.,
By RICHARD PECK,
Agent.

Sworn this 15th day of February, 1869, before me.
SAMUEL L. BRONSON,
U. S. Commissioner.

T. E. DOOLITTLE,
Proctor.

Replication.

To the Honorable William D. Shipman, judge of the district court of the United States for the district of Connecticut:

The replication of the New Haven Steam Transportation Company, libellant, to the answer of the New Haven Steamboat Company, claimant, alleges that the said libellant will aver, maintain, and prove its said libel to be true, certain, and sufficient, and that said answer is untrue, uncertain, and insufficient, and thereupon prays as in said libel it has already prayed.

C. R. INGERSOLL,
Proctor for Libellant.

Evidence for libellants.

The following is a copy of the testimony on file in said cause:

Capt. JOS. E. STANNARD, by Mr. Ingersoll:

Age 36; captain propeller Northampton for 8 months before
35 collision; running between New Haven and *and* New York as a freight and passenger boat; at that season of the year usually left New Haven at 10.15 p. m. and New York at 6 p. m., arriving at

so that if she had continued on her course as she should have done, the vessels would have passed on the starboard side of each other at a safe and proper distance. The claimants further admit and say that when the propeller approached very near, the steamboat being still on
30 her starboard side, she suddenly and unexpectedly gave one blast of her steam-whistle, and shortly before or immediately thereafter, without waiting for any response, improperly and wrongfully put her helm to port, attempted to cross the steamboat's bow, and to pass on her port side. They further say that the propeller's signal-whistle so given was immediately and promptly answered by two blasts from the steamboat, indicating that it was not practicable for the propeller, in her relative situation and under the circumstances, to cross over or pass on the port side of the steamboat, and they deny the allegations of the libel in any wise to the contrary. They also deny that upon giving such response the wheel of the steamboat was put to the starboard, or that she sheered to the southward; but, on the contrary, they aver that upon observing that the propeller had ported her helm and changed her course, the wheel was immediately ordered and put to port and the engines stopped, in order, if possible, to avoid the collision, which at that time appeared to be inevitable. They also deny that the propeller responded to the said steamboat's signal with one blast, or that she thereupon stopped her engine; but they aver that if she did so
31 it was not until the moment of collision, and that she thereby improperly adhered to her wrongful attempt to cross the steamboat's bow. They admit and say that having so unexpectedly and wrongfully ported her helm, and placed herself in the way of the steamboat, she did strike her on the port side, somewhere about midships, a square blow, nearly or quite at right angles with her keel, causing her to sink, with all her cargo.

Fifth. The claimants deny that the steamboat should have passed to the right and on the port side of the propeller, or that when the first signal whistle was blown by the propeller it was the steamboat's duty, or that she could have ported her helm and passed to the right; but they aver nevertheless, that the wheel was ported, and the fact that it was not practicable for the propeller to cross over and pass on her port side was promptly signalized to the propeller. They deny that it was the duty of the steamboat to have signalized her intention to pass on the starboard side of the propeller, in season for the propeller to have governed herself accordingly, or that when the steamboat gave the two blasts of her whistle, or even when the propeller gave her single blast, it was practicable to have passed on the port side of the propeller, or that by porting her helm the collision would or could have been avoided. The claimants further say that, before the pro-
32 peller changed her course to cross the steamboat's bows, she was not so approaching as to require a signal from either; but if otherwise, and if any signal was required, it should have been a signal to go to the left; and under the circumstances, it was the duty of the propeller to have given two blasts of her whistle instead of one, and kept along on the starboard side of the steamboat. They further say that, if the steamboat should have signalized the propeller as alleged in the libel, (which is not admitted,) still she was excused from so doing, because, as they aver, the propeller was running in violation of law, without having all her lights properly set and burning, in consequence of which the lookout and those navigating the said steamboat supposed, and had good reasons to suppose her to be a sailing vessel, which the steamboat might pass without signals, and the fact that she was

a propeller approaching, was not known, and could not have been known by them until she sounded her first signal whistle. The claimants further aver, that the said propeller was then and there proceeding in violation of law, without having any stern light properly set and burning; without having any lookout properly stationed and faithfully attending to that duty, and without being otherwise properly
33 manned, equipped, or navigated, and that the collision was in fact caused thereby, and by the carelessness, negligence, inattention, and improper navigation of those in charge of the propeller and not otherwise; and these claimants deny, each and every allegation of the libel not herein admitted, and which is in any wise contrary to the averments and statements herein before contained.

Sixth. The claimants have no knowledge or information in respect to the kind, quality, amount, or value of the cargo, nor who were the owners or consignees thereof, nor whether or not the same was totally lost, and they accordingly deny the several allegations of the sixth article of the libel.

Seventh. The claimants admit that the said steamboat was at the time of the commencement of this action, within the jurisdiction of this court; that all and singular the premises herein contained are true; in verification whereof, if desired, the claimants crave leave to refer to the depositions and other proofs to be by them exhibited in this cause.

Wherefore the claimants pray that this honorable court will be pleased to pronounce against the libellants, and that the libel may be dismissed with costs.

34 The New Haven Steamboat Co.,

By RICHARD PECK,
Agent.

Sworn this 15th day of February, 1869, before me.

SAMUEL L. BRONSON,
U. S. Commissioner.

T. E. DOOLITTLE,
Proctor.

Replication.

To the Honorable William D. Shipman, judge of the district court of the United States for the district of Connecticut:

The replication of the New Haven Steam Transportation Company, libellant, to the answer of the New Haven Steamboat Company, claimant, alleges that the said libellant will aver, maintain, and prove its said libel to be true, certain, and sufficient, and that said answer is untrue, uncertain, and insufficient, and thereupon prays as in said libel it has already prayed.

C. R. INGERSOLL,
Proctor for Libellant.

Evidence for libellants.

The following is a copy of the testimony on file in said cause:

Capt. JOS. E. STANNARD, by Mr. Ingersoll:

Age 36; captain propeller Northampton for 8 months before
35 collision; running between New Haven and *and* New York as a freight and passenger boat; at that season of the year usually left New Haven at 10.15 p. m. and New York at 6 p. m., arriving at

New Haven at 1.30; tonnage of Northampton 495 tons. I think and believe she is 156 feet long; draft, loaded, about 10 feet. Left New York 22d October, 1868, at usual hour; set our lights about dark; white lights at stern and bow; red and green lights on usual side. I was not on deck, but in my room at the time New Haven light was sighted. I was called by forward deck watch at 12.45. I came on deck and went into pilot-house; pilot was there—Arthur Mellon; remained there until collision; so did Mellon. On going into pilot-house I saw New Haven light nearly ahead, a trifle on our starboard bow; distant, I should judge, 5 miles. I had been there some two or three minutes when I took the bearings of the light by compass, and found it bearing due E. N. E. I told the pilot to keep her directly for the light. Very shortly after—some few minutes, I saw the lights of a steamer coming down the harbor. I stated to the pilot that I thought that it was the Continental. She continued coming down until bearing about one point on our port bow N. E. by E., when her course was changed to the westward—I don't say west, but westerly. She had been running
36 southerly coming down the harbor. When she first changed her course westerly, she beaded directly for the Northampton, which I could tell by her range of lights, they being exactly in range after she got upon her course. After a little her course varied, a little southerly. She was then, when she hauled up, on her course westerly, distant about 3 miles. I continued going our course E. N. E. until I was distant from the Continental, I should judge, about three quarters of a mile. She was then bearing a very little on our port bow, nearly ahead. I then gave one blast of the whistle and changed my course one point easterly to E. by N. I received no response to that whistle for, I should say, nearly or quite a minute. I then heard two blasts of the Continental's whistle, which I immediately answered by one whistle, rung two bells to stop the boat, and in the mean time told the pilot to heave the wheel hard aport. At the time I blew the last whistle, I also took hold and assisted him, as soon as I had rung the bells. The Continental swung off gradually to the southward, came in collision with the Northampton, striking her nearly amidships, a little abaft on the port side, the bow of the Continental striking her nearly at right angles, lacking some 15 degrees forward of a right angle; heavy shock. She
37 went in about two feet past the center of the boat; severed the steam-pipe that connects the cylinder with the boiler, causing the steam to escape. I saw at once that she was sinking, and reported the same to Captain Bowns of the Continental. I requested Mr. Mellon, the pilot, to see Captain Bowns, and ask him to keep his stem in the Northampton. I then went to work to save the passengers on board—to transfer them. I sent the steward into the lower cabin to see if all the passengers were up from there. The second mate I ordered to clear away the boats ready for lowering. At about this time I ordered the mate to get a hawser from the bow to the Continental, to try to get her (Northampton) in shore, if she would float after the Continental backed out. When it was reported that there were no passengers on the Northampton, I requested Capt. Bowns to try and press the Northampton in shore as she lay across his bows. He endeavored to do so, but I believe could not steer his boat, she turning around with him. He accordingly backed out, when the Northampton went down very quickly. I have no means of determining the time, as I did not note it, but I judge that she went down in about half an hour after being struck. The lead was thrown on the Continental at my request, just as she was
38 backing out of the Northampton, and reported three and a-half

fathoms. The weather was cloudy, the wind N. N. E.; I guess it was. It had spit a little rain occasionally, but nothing to amount to anything. Wind about a five-knot breeze, I guess. No unusual sea, smooth, cloudy, but could see lights very well indeed—I think as well as I ever could see them. I noticed none of our lights after I first saw the Continental, except our side lights and head lights; they were burning brightly; our side lights were a little aft the pilot-house; could see their reflection on the deck and sides; I could'nt see the stern light from the pilot-house. When the Continental was discovered she was possibly four miles off, in a direct line; that is my judgment—am not positive. She bore at that time from us on our port bow, somewhere about N. E., I presume. From the time I first discovered her I changed my course but about a point. I changed that so as to pass to the right of the Continental. When she blew her two whistles she was possibly 250 yards from the Northampton. We generally met the Continental every trip of ours to New Haven. I rung the engine-bell twice to stop the boat—the same bell. I rung once to slow, and once to stop. The boiler of the Northampton was not struck. (A photograph of the Northampton is shown.)

We burn signal oil in the lamps—ordinary signal lanterns. Stern
39 light is about 25 feet from the deck, within about 18 inches of the top of the flag. The bow light is on the stem. It stands on forward side of stem.

Cross-examined by Mr. Benedict:

I went to my room about half past 8—starboard side, forward, in saloon, about 6 feet from pilot-house. Was called in the usual way, as we were getting down toward the harbor. He gave no notice of danger. Had given instructions to be called as we got down toward the harbor. The mate was in his room; cannot say when he went. The pilot had charge of the deck. Left the deck watch one man on deck also. Also main deck watchman, a person stationed in saloon, waiter, and another in lower cabin.

ARTHUR MELLON, by Mr. Ingersoll:

Am steamboat pilot. My age is 48. Have been on several boats; 10 years on Bridgeport boats, 14 years steamers; most of the time on the sound, except the last year. Was on the Northampton at the collision. Was pilot. Took the wheel at New York; I held it till we got to Sands Point. Then wheelsman took it. He steered till we got down to about West Haven. Then I sent him out to call Capt. Stannard. I
40 was in the pilot-house during the whole passage. Might have stepped out for a minute. Capt. Stannard came. We were then in sight of the New Haven light. The light bore E. N. E. I did not notice the lights of the Continental just at that time. Saw the lights in the harbor. When I first saw the Continental's light, she was running down the harbor near the fort. Capt. Stannard called my attention to her lights first. She bore not much from N. E. Might be a little to N. I should say certain two points on our port bow. We were steering straight for New Haven light. We kept on our course till we saw her turn down by the shoal ground, and she headed direct for us. Then she ran from 4 to 5 minutes on that course I should think. I saw the New Haven light to the southward of her. When she was within about a half or three-quarters of a mile of us, Capt. Stannard blew one whistle and ported our wheel; we swung from three quarters to a point, I think. We did not get an answer immediately from her; it might have been a half a minute, more or less. I cannot tell when she blew

two whistles. Capt. Stannard immediately blew one whistle, and rang two bells to stop the Northampton. Struck the gong bell twice, and bore the Northampton's wheel more to port—about as hard as we could at the time. Then the Continental was about two lengths off, as
41 near as I could judge. We finally came together. The Continental hit the Northampton nearly at right angles, a little pointing aft. Some confusion just after she hit. When the Northampton's first whistle blew, the Continental was nearly in range of the New Haven light, and we were steering for that light. The boats were then from one-half to three-quarters of a mile apart. I went on board the Continental after the collision. Just before we hit I saw three lights burning. Head and side lights. Did not look aft.

Cross-examined by Mr. Benedict:

Post was wheelsman (Walter Post, I believe, is the name) from Sands Point till we called Capt. Stannard. Wind about N. N. E.; cloudy; raining at spells. I think it was drizzling when we came together. Could see lights (light-houses) 5 or 6 miles. I took the wheel when Post left it. He did not help at the wheel after that. Capt. Stannard and I steered her after that. When we first blew one whistle, Capt. Stannard told me to port. Capt. Stannard and I kept hold of the wheel after Post left it. No one then in the pilot-house except Captain Stannard and myself. Post had left. I supposed he had gone on the forward deck.

WALTER C. POST, by Mr. Ingersoll:

42 Age 23. Was on the Northampton at the time of the collision. Had the wheel of the Northampton until off Merwin's, in Milford, when Mellon took it. I went to call the captain. I called him and came back to the pilot-house and took hold of the wheel again. Remained there some 5 or 8 minutes, till the captain came in, and then I left. I went just outside the pilot-house and called the mates. I stepped round to the bow light, looked at the side lights, and at the stern light. Found the bow light burning brightly. I saw what proved to be the Continental before I left the pilot-house. She was coming down the harbor. She bore about two to two and a half points on our port bow, as near as I could judge. The side lights also were burning brightly. The stern light I found burning dim. I went aft and lowered it down, took it forward in the passage way on the starboard side, and picked up the wicks. Took them back and hoisted them again. There were two lanterns in one box. They showed as one light. The top of the box moved with a hinge, and the lights were placed in at the top. After I got the box down, I took them both at the same time. I went
43 along and went into the door where the space is, out of the draft, so they would not blow out, and when there picked up the lights one after another. After that was done, I took them to the staff and put them in the box and hoisted them up. I heard the Northampton blow one whistle. I was aft then, at the time of this first whistle, was just stepping inside the passage way with the lights, as near as I can recollect. After an interval there was a reply with two whistles from the Continental. I was then coming out of the passage way, as near as I can remember. The Northampton blew one whistle again, directly after. I was then in the act of hoisting the lights at that time. After hoisting up the lights I saw the Continental coming for us and I ran forward on starboard side. Got part of the way forward—about half way; the concussion knocked me down.

Cross-examined by Mr. Benedict:

The box was made of tin and glass, 6 or 8 inches square, I should judge; large enough for two good-sized lanterns. There were really two boxes, but both lanterns showed as one. There was a window forward, one abaft, and one abeam. The size I gave was the size of each one. They were joined by a band, and this band spanned the flag-staff. A lantern in each box, common-sized lantern, brass lantern, clear
44 glass; no guards around it; round. The top and bottom was brass; the rest, glass. It was not a globe, but round, and smaller at the top. The windows were so arranged that each lantern would shine forward and aft, and one abeam to starboard, and the other abeam to port. There was a little round brass lamp in the lantern, and this lantern stood on the bottom of the box. I went, then, and unbelayed the halyard till it struck the band. Then I opened the box, and took out the lantern, and trimmed it; don't know how much each lamp would hold; double wick in each lantern. I was the bow watchman; Mr. Corydon Coombs, main-deck watchman.

MARTIN HIGGINS, by Mr. Ingersoll:

Was mate of the Northampton at the time of the collision; am 30 years of age. I was turned in at the time of the collision; at least was getting out at the time she struck. I got on deck, and opened the forward scuttle, and sung out to the deck hands, and helped some of them up. I went on board the Continental to get a line aboard. After the collision, when I was around her decks and clearing away the boats, I saw both the side lights and stern light and bow light; they were
45 burning good. I saw them burning until daylight. I remained on board the wreck till she went down, except when I went on board the Continental to get the line aboard. I was on her till her upper works went to pieces, some six or eight days after; saw the Continental pass inside the wreck once; no more, to my recollection; saw the Elm City and New Haven, the consort of the Northampton, also pass inside. The Continental was coming from New York; the Elm City was bound to New York; the New Haven was bound to New Haven.

Cross-examined by Mr. Benedict:

I stayed on board during these eight days all but about four hours, when Capt. Stannard relieved me. I ate and slept on board; cooked for ourselves. She was lying on the bottom, about half her saloon out of water. The water was up to her saloon windows at high water. The tide rose and fell about 7 or 8 feet; did not sleep at high water; traveled the hurricane deck then.

EDGAR BEACH, by Mr. Ingersoll:

Was on the Northampton, engineer in chief, at the time of collision; have been licensed engineer since 1860 or 1861. At the time of collision I was in the engine-room; had been there about half an hour.
46 The first thing I heard before collision was one whistle blow on Northampton. In about a minute after she blew one whistle again, and rang two bells, gong bells. I stopped her as soon as I could. After I had stopped her, I told fireman to open his door, and shut his damper. Immediately after that she struck us; she came through into fire-room, and struck the main steam-pipe; she broke the bolts off on the top of the throttle chest; steam and hot water came. I tried to get out the starboard door, and couldn't open it, and then crossed the room

two whistles. Capt. Stannard immediately blew one whistle, and rang two bells to stop the Northampton. Struck the gong bell twice, and bore the Northampton's wheel more to port—about as hard as we could at the time. Then the Continental was about two lengths off, as
41 near as I could judge. We finally came together. The Continental hit the Northampton nearly at right angles, a little pointing aft. Some confusion just after she hit. When the Northampton's first whistle blew, the Continental was nearly in range of the New Haven light, and we were steering for that light. The boats were then from one-half to three-quarters of a mile apart. I went on board the Continental after the collision. Just before we hit I saw three lights burning. Head and side lights. Did not look aft.

Cross-examined by Mr. Benedict:

Post was wheelsman (Walter Post, I believe, is the name) from Sands Point till we called Capt. Stannard. Wind about N. N. E.; cloudy; raining at spells. I think it was drizzling when we came together. Could see lights (light-houses) 5 or 6 miles. I took the wheel when Post left it. He did not help at the wheel after that. Capt. Stannard and I steered her after that. When we first blew one whistle, Capt. Stannard told me to port. Capt. Stannard and I kept hold of the wheel after Post left it. No one then in the pilot-house except Captain Stannard and myself. Post had left. I supposed he had gone on the forward deck.

WALTER C. POST, by Mr. Ingersoll:

42 Age 23. Was on the Northampton at the time of the collision. Had the wheel of the Northampton until off Merwin's, in Milford, when Mellon took it. I went to call the captain. I called him and came back to the pilot-house and took hold of the wheel again. Remained there some 5 or 8 minutes, till the captain came in, and then I left. I went just outside the pilot-house and called the mates. I stepped round to the bow light, looked at the side lights, and at the stern light. Found the bow light burning brightly. I saw what proved to be the Continental before I left the pilot-house. She was coming down the harbor. She bore about two to two and a half points on our port bow, as near as I could judge. The side lights also were burning brightly. The stern light I found burning dim. I went aft and lowered it down, took it forward in the passage way on the starboard side, and picked up the wicks. Took them back and hoisted them again. There were two lanterns in one box. They showed as one light. The top of the box moved with a hinge, and the lights were placed in at the top. After I got the box down, I took them both at the same time. I went
43 along and went into the door where the space is, out of the draft, so they would not blow out, and when there picked up the lights one after another. After that was done, I took them to the staff and put them in the box and hoisted them up. I heard the Northampton blow one whistle. I was aft then, at the time of this first whistle, was just stepping inside the passage way with the lights, as near as I can recollect. After an interval there was a reply with two whistles from the Continental. I was then coming out of the passage way, as near as I can remember. The Northampton blew one whistle again, directly after. I was then in the act of hoisting the lights at that time. After hoisting up the lights I saw the Continental coming for us and I ran forward on starboard side. Got part of the way forward—about half way; the concussion knocked me down.

Cross-examined by Mr. Benedict:

The box was made of tin and glass, 6 or 8 inches square, I should judge; large enough for two good-sized lanterns. There were really two boxes, but both lanterns showed as one. There was a window forward, one abaft, and one abeam. The size I gave was the size of each one. They were joined by a band, and this band spanned the flag-staff. A lantern in each box, common-sized lantern, brass lantern, clear
44 glass; no guards around it; round. The top and bottom was brass; the rest, glass. It was not a globe, but round, and smaller at the top. The windows were so arranged that each lantern would shine forward and aft, and one abeam to starboard, and the other abeam to port. There was a little round brass lamp in the lantern, and this lantern stood on the bottom of the box. I went, then, and unbelayed the halyard till it struck the band. Then I opened the box, and took out the lantern, and trimmed it; don't know how much each lamp would hold; double wick in each lantern. I was the bow watchman; Mr. Corydon Coombs, main-deck watchman.

MARTIN HIGGINS, by Mr. Ingersoll:

Was mate of the Northampton at the time of the collision; am 30 years of age. I was turned in at the time of the collision; at least was getting out at the time she struck. I got on deck, and opened the forward scuttle, and sung out to the deck hands, and helped some of them up. I went on board the Continental to get a line aboard. After the collision, when I was around her decks and clearing away the boats, I saw both the side lights and stern light and bow light; they were
45 burning good. I saw them burning until daylight. I remained on board the wreck till she went down, except when I went on board the Continental to get the line aboard. I was on her till her upper works went to pieces, some six or eight days after; saw the Continental pass inside the wreck once; no more, to my recollection; saw the Elm City and New Haven, the consort of the Northampton, also pass inside. The Continental was coming from New York; the Elm City was bound to New York; the New Haven was bound to New Haven.

Cross-examined by Mr. Benedict:

I stayed on board during these eight days all but about four hours, when Capt. Stannard relieved me. I ate and slept on board; cooked for ourselves. She was lying on the bottom, about half her saloon out of water. The water was up to her saloon windows at high water. The tide rose and fell about 7 or 8 feet; did not sleep at high water; traveled the hurricane deck then.

EDGAR BEACH, by Mr. Ingersoll:

Was on the Northampton, engineer in chief, at the time of collision; have been licensed engineer since 1860 or 1861. At the time of collision I was in the engine-room; had been there about half an hour.
46 The first thing I heard before collision was one whistle blow on Northampton. In about a minute after she blew one whistle again, and rang two bells, gong bells. I stopped her as soon as I could. After I had stopped her, I told fireman to open his door, and shut his damper. Immediately after that she struck us; she came through into fire-room, and struck the main steam-pipe; she broke the bolts off on the top of the throttle chest; steam and hot water came. I tried to get out the starboard door, and couldn't open it, and then crossed the room

and burst open the door on the other side. They were about five-eights-of-an-inch bolts, I should judge. I spoke to the steward to open the doors, and let me out, and I went out on the starboard side, and was scalded; then went on port side, on to the Continental, and into engineer's room. Between the whistles I did nothing with my engine, except to put some oil on the slide. I put it on with a squirt can. I saw the lights on the Northampton after she had sunk, all of them burning. I bought the oil for the lights; it was signal oil, and for that purpose.

CORYDON L. COMBS, by Mr. Ingersoll:

Was deck watchman. I was a little aft the forward gangway, on the starboard side. I heard the Northampton blow one whistle; then
47 in an interval of half or three quarters of a minute heard the Continental blow two whistles; directly after that heard the Northampton blow one whistle, and ring two bells; saw the Continental when she was half her length from us; I saw through the window on the port side, just forward of the gangway; I saw the Northampton's bow light burning brightly after she sank.

WALES FRENCH, by Mr. Ingersoll:

Reside in New Haven; was on board the Continental as a passenger on the night of the collision; was in the berth, below; came on deck; was on deck when the Northampton sunk; saw either three or four lights when she was either going down, or after she was down. There was a light at her bow, and in the middle of the boat, and at or near her stern. They were burning plain, brightly. I was looking at the boat as we backed away from her as she went down; think there was two in the middle of the boat; don't recollect about the color of the lights. I was standing by a gentleman, and remarked that she had lights, and said I thought they might have seen her.

JOHN ADAMS, by Mr. Ingersoll:

48 Was steward of the Northampton. I was in my room, close by the engineer's room; heard one whistle from the Northampton. I did not hear any whistle from any other boat, and in about a minute I heard another whistle from the Northampton. Right after the last whistle I heard two bells strike in the engine-room.

DAVID LEWIS, by Mr. Ingersoll:

Reside at Fair Haven, Conn.; was on the Northampton at the time of the collision as a passenger; at the collision, was down on the main deck, at the starboard gangway; had been there ten or fifteen minutes probably; went down there with another passenger to pay our fare. The clerk was not in the office. We were in conversation, and the other passenger asked me how far we were from New Haven, and I looked out of the starboard gangway, and saw New Haven light pretty much ahead. I looked out of the after gangway. I told him I should think we were between two and three miles. That was my judgment at the time. I saw no other lights. I did not notice anything between us and the light. After that I heard a whistle on the Northampton, and they rang the bells, which I suppose was to stop. The next thing I saw was the cargo tumbling over on to us, and the steam
49 escaping at the same time. I cannot state how many whistles were blown. I did not hear but one. I did not pay attention to whistles. Have been 25 years on the water, but very little on a steam-

boat; 10 days on Elm City. I did not see Continental at a proaching. I was on the forward deck on the Continental, a Northampton sinking. Saw forward and after lights. burning good, about as bright as such lights generally do b

Cross-examined by Mr. Benedict:

Was second mate on the Elm City, in 1863, I think.

ALPHEUS W. SNOW, by Mr. Ingersoll:

Captain of the steamer New Haven, propeller; met the Northampton on the night of the collision, and I was on the New Haven; met her off Stratford Point; went within half a mile of her. She had bow, stern, and two side lights burning finely. I knew her by her looks. She belonged the same line *of* my boat. Saw her 4 or 5 miles off.

RICHARD LANE, by Mr. Ingersoll;

Pilot of the New Haven at the time of the collision; met her that night off Stratford Point; passed at about half a mile; recognized her; was satisfied it was her; saw her head, stern, and two side lights;
50 saw her after she sunk; went as often inside as outside of her after she sunk.

Libellants rest.

Evidence for claimant.

MAY 5, 10 *a. m.*

DAVID G. HORTON, by Mr. Benedict:

Am Hell Gate pilot; have been for seven years; was on the Continental at time of collision—a passenger; saw the Northampton before collision. I just came out of the pilot-house when I first saw her; saw green and white lights—no other. White light forward; saw no aft light or red light. They bore two and a half points on our starboard bow. I was on the starboard side of the pilot-house. She seemed to be a sailing vessel. It is generally the case for a vessel coming into port to take a light forward to get her chain and anchor ready to drop anchor. I came down on main deck, and went aft on starboard gangway, and saw her lights again. Saw green and white lights. They then bore two and a half points off starboard bow as before. I went down forward to get a cup of coffee, Got it poured out and sugar into it; heard two whistles and four bells. Then I came out and went on deck.
51 I was on the steps going from lower cabin to main deck; just started to go up when the collision took place. The steps 15 to 20 feet from where I was at my coffee. I went quickly. Collision occurred when I got my foot on first step. I had heard no whistle from the Northampton when I left the pilot-house. From time I left pilot-house to collision was 5 to 6 minutes. This is my judgment. I drew the coffee from the urn myself. I guessed she was a sailing vessel, because she did not have any stern light. I could not see her hull when I first saw her. When I came on deck after the collision, I saw stern light about half way up the flag-staff.

Cross-examination, by Mr. Donahue:

Consider myself familiar with the navigation of New Haven harbor; had been in the pilot-house from the time I left the dock. Captain Bowns, the pilot, and two wheelsmen had been with me. Don't know the course from the dock to the fort, nor from fort to shoal ground. The Continental was hauling or had hauled upon her sound course as I left

and burst open the door on the other side. They were about five-eights-of-an-inch bolts, I should judge. I spoke to the steward to open the doors, and let me out, and I went out on the starboard side, and was scalded; then went on port side, on to the Continental, and into engineer's room. Between the whistles I did nothing with my engine, except to put some oil on the slide. I put it on with a squirt can. I saw the lights on the Northampton after she had sunk, all of them burning. I bought the oil for the lights; it was signal oil, and for that purpose.

CORYDON L. COMBS, by Mr. Ingersoll:

Was deck watchman. I was a little aft the forward gangway, on the starboard side. I heard the Northampton blow one whistle; then
47 in an interval of half or three quarters of a minute heard the Continental blow two whistles; directly after that heard the Northampton blow one whistle, and ring two bells; saw the Continental when she was half her length from us; I saw through the window on the port side, just forward of the gangway; I saw the Northampton's bow light burning brightly after she sank.

WALES FRENCH, by Mr. Ingersoll:

Reside in New Haven; was on board the Continental as a passenger on the night of the collision; was in the berth, below; came on deck; was on deck when the Northampton sunk; saw either three or four lights when she was either going down, or after she was down. There was a light at her bow, and in the middle of the boat, and at or near her stern. They were burning plain, brightly. I was looking at the boat as we backed away from her as she went down; think there was two in the middle of the boat; don't recollect about the color of the lights. I was standing by a gentleman, and remarked that she had lights, and said I thought they might have seen her.

JOHN ADAMS, by Mr. Ingersoll:

48 Was steward of the Northampton. I was in my room, close by the engineer's room; heard one whistle from the Northampton. I did not hear any whistle from any other boat, and in about a minute I heard another whistle from the Northampton. Right after the last whistle I heard two bells strike in the engine-room.

DAVID LEWIS, by Mr. Ingersoll:

Reside at Fair Haven, Conn.; was on the Northampton at the time of the collision as a passenger; at the collision, was down on the main deck, at the starboard gangway; had been there ten or fifteen minutes probably; went down there with another passenger to pay our fare. The clerk was not in the office. We were in conversation, and the other passenger asked me how far we were from New Haven, and I looked out of the starboard gangway, and saw New Haven light pretty much ahead. I looked out of the after gangway. I told him I should think we were between two and three miles. That was my judgment at the time. I saw no other lights. I did not notice anything between us and the light. After that I heard a whistle on the Northampton, and they rang the bells, which I suppose was to stop. The next thing I saw was the cargo tumbling over on to us, and the steam
49 escaping at the same time. I cannot state how many whistles were blown. I did not hear but one. I did not pay attention to whistles. Have been 25 years on the water, but very little on a steam-

boat; 10 days on Elm City. I did not see Continental at any time approaching. I was on the forward deck on the Continental, and saw the Northampton sinking. Saw forward and after lights. They were burning good, about as bright as such lights generally do burn.

Cross-examined by Mr. Benedict:

Was second mate on the Elm City, in 1863, I think.

ALPHEUS W. SNOW, by Mr. Ingersoll:

Captain of the steamer New Haven, propeller; met the Northampton on the night of the collision, and I was on the New Haven; met her off Stratford Point; went within half a mile of her. She had bow, stern, and two side lights burning finely. I knew her by her looks. She belonged the same line *of* my boat. Saw her 4 or 5 miles off.

RICHARD LANE, by Mr. Ingersoll;

Pilot of the New Haven at the time of the collision; met her that night off Stratford Point; passed at about half a mile; recognized her; was satisfied it was her; saw her head, stern, and two side lights;
50 saw her after she sunk; went as often inside as outside of her after she sunk.

Libellants rest.

Evidence for claimant.

MAY 5, 10 *a. m.*

DAVID G. HORTON, by Mr. Benedict:

Am Hell Gate pilot; have been for seven years; was on the Continental at time of collision—a passenger; saw the Northampton before collision. I just came out of the pilot-house when I first saw her; saw green and white lights—no other. White light forward; saw no aft light or red light. They bore two and a half points on our starboard bow. I was on the starboard side of the pilot-house. She seemed to be a sailing vessel. It is generally the case for a vessel coming into port to take a light forward to get her chain and anchor ready to drop anchor. I came down on main deck, and went aft on starboard gangway, and saw her lights again. Saw green and white lights. They then bore two and a half points off starboard bow as before. I went down forward to get a cup of coffee, Got it poured out and sugar into it; heard two whistles and four bells. Then I came out and went on deck.
51 I was on the steps going from lower cabin to main deck; just started to go up when the collision took place. The steps 15 to 20 feet from where I was at my coffee. I went quickly. Collision occurred when I got my foot on first step. I had heard no whistle from the Northampton when I left the pilot-house. From time I left pilot-house to collision was 5 to 6 minutes. This is my judgment. I drew the coffee from the urn myself. I guessed she was a sailing vessel, because she did not have any stern light. I could not see her hull when I first saw her. When I came on deck after the collision, I saw stern light about half way up the flag-staff.

Cross-examination, by Mr. Donahue:

Consider myself familiar with the navigation of New Haven harbor; had been in the pilot-house from the time I left the dock. Captain Bowns, the pilot, and two wheelsmen had been with me. Don't know the course from the dock to the fort, nor from fort to shoal ground. The Continental was hauling or had hauled upon her sound course as I left

the pilot-house. I heard nothing said about the light as I was leaving the pilot-house. The pilot of the boat and one of the wheelsmen had left the pilot-house before I did. I left the captain and wheelsman there.

52 When I came out of the wheel-house I looked at the light and saw it was 2½ points off. Did not look at it with the intention of ascertaining whether it was a bow light or not. I had no duty with regard to it. Did not look to see if the white light was moving about the deck; went from pilot-house to after lower deck nearly 300 feet; walked my ordinary gait. When I got there, the light bore about the same. I had gone down the stairway in addition to the distance. The wind was about N.N.E.; 4 or 5 knot breeze. A vessel beating down the sound would on one course be about N.W., and the other about E., as she would lie within six points of the wind. Judged the Northampton's lights to be about two miles off. I did not report them or hear them reported. Found the pilot below when I got there. The coffee was in the pantry.

Re-direct:

I stopped on my way at the water-closet. This was before I got to the aft gangway.

WILLIAM S. GRANT, by Mr. Benedict:

Was on the Continental at the time of collision—forward deck look-out—forward promenade deck. Stood within about 8 feet of the stem. Walked back and forth across the bow. To look out was my whole duty. Saw a sail off starboard bow and reported it. Said a "Sail off starboard bow;" answered at pilot-house, "Aye! aye!" This was 5 or 6 minutes

53 before collision, I should judge. Saw a green and white light distinct. Saw no red light at the time. After the Northampton blew her whistle I saw her red light. The green shut out, and the other came in. This was almost the instant of the blow. I stood there then till the collision. Went into her at about right angles, on her port side abaft the smoke-stack. Cut into her about half way through. Stayed in her, I should think, over three-quarters of an hour. I believe it was the flood tide, and run to the westward. Heard one blast from Northampton's whistle, and immediately after heard two blasts from Continental. This was just before the collision—all in a heap. It was all at once, as near as could be. When I first saw the green and white lights I should judge they were a mile and a half off, may be further—hard to judge in the night. Saw Stratford light about time first saw the Northampton's lights. It was to seaward of latter. We had passed the New Haven light when I first saw the Northampton's. It had gone out of my sight. I was looking ahead. (It is conceded that the Continental had proper lights.)

Cross-examination by Mr. Donahue:

54 Passed the New Haven light on our port bow from a half to three-quarters of a mile. Don't know how we were heading. Did not see Stratford light before New Haven light. I saw the Stratford light and Northampton's lights about together. The Stratford light bore ahead a point or point and a half off our starboard bow. The Northampton's lights bore from two and a half to three points off starboard bow, should judge, and so continued till the whistle blew. As near as I can judge, then, and now, the vessels were about a mile and one-half apart when I first discovered the Northampton's lights. I did not see a sail, but the lights, and supposed it was a sail vessel.

FREDERICK W. MILLS, by Mr. Benedict:

Was wheelsman on the Continental at time of collision. Took the wheel at the dock; kept it till collision. In the pilot-house were Captain Bown's pilot Woolgamarth, Richardson, the other wheelsman, Mr. Horton, and myself. Richardson, Horton, and the pilot left. Richardson left at Beach buoy, and the pilot and Horton left after we passed Pardee's buoy. I saw the lights that proved to be the Northampton's. Heard the report of lookout, "Sail off starboard bow." Captain answered. I looked and saw two lights, green and white, on our starboard bow, between two and three points, I should think. This was in the neighborhood of four or five minutes before the collision, I should
55 judge. I should judge a mile or a mile and a half off. Heard one blast of the Northampton's whistle. We directly responded with two. I mean immediately. From her whistle should think not more than half a minute to collision. When we first saw the Northampton's lights we were just coming up on our sound course. We did not get on our sound course before the collision. After the lookout reported the vessel, the captain took up his glass and looked at her, and told me to keep her off. I starboarded my wheel, and kept off half a point. Then he told me to steady. I did so. While we were doing this, steadying, we received her whistle. We responded, and rung four bells promptly. Our sound course, after we get out beyond shoal ground, is southwest three-quarters W. to Stratford. We did not get to that by a point and three-quarters when the collision occurred. The only change we made was when the captain told me to keep her off half a point and steady. We had a port wheel when we came together—five or six spokes to port. Saw a red light after the Northampton's whistle blew; could not see her green light. I saw she had changed her course, and opened her red light to my view. This not more than half a minute before collision. It was very sudden. Struck nearly athwartships as we could, I
56 should think. When we came into her we were heading S.W. by S. Saw Stratford light. The Northampton's light was inside of that. From time I first saw the Northampton's lights till she blew her whistle, was two or three minutes, I should judge. We always run down past New Haven light. Always get it four or five points abaft the beam before we let her come up. We happened to run out a little further than usual that night. The captain timed her. When we passed Pardee's buoy it was eight minutes to one. When we began to haul up it was one minute past one. I looked at the clock after collision—it was four minutes past one; half a minute might have elapsed after collision before I looked.

Cross-examined by Mr. Donahue.

S. half W. sometimes quarter; last course to New Haven light; continued this to Pardee's buoy, then changed to S. S. W., and run nine minutes; then we began to haul upon our sound course. The pilot left immediately after we passed Pardee's buoy, before we commenced hauling up on our sound course. After we run out the nine minutes, we haul upon our sound course gradually. We had run out our S. S. W. course before we saw the lights; had got no order before we saw the lights; was in the act of hauling; had moved the wheel;
57 captain said we were out; think he said let her come up from S. S. W. to S. W. three-quarters W., two points and three-quarters. We might have come up a point and a half about, when we saw the light. She was then swinging slowly. Then I checked her. Stratford light then bore about two points on our starboard bow, eleven or twelve

the pilot-house. I heard nothing said about the light as I was leaving the pilot-house. The pilot of the boat and one of the wheelsmen had left the pilot-house before I did. I left the captain and wheelsman there.

52 When I came out of the wheel-house I looked at the light and saw it was 2½ points off. Did not look at it with the intention of ascertaining whether it was a bow light or not. I had no duty with regard to it. Did not look to see if the white light was moving about the deck; went from pilot-house to after lower deck nearly 300 feet; walked my ordinary gait. When I got there, the light bore about the same. I had gone down the stairway in addition to the distance. The wind was about N.N.E.; 4 or 5 knot breeze. A vessel beating down the sound would on one course be about N.W., and the other about E., as she would lie within six points of the wind. Judged the Northampton's lights to be about two miles off. I did not report them or hear them reported. Found the pilot below when I got there. The coffee was in the pantry.

Re-direct:

I stopped on my way at the water-closet. This was before I got to the aft gangway.

WILLIAM S. GRANT, by Mr. Benedict:

Was on the Continental at the time of collision—forward deck look-out—forward promenade deck. Stood within about 8 feet of the stem. Walked back and forth across the bow. To look out was my whole duty. Saw a sail off starboard bow and reported it. Said a "Sail off starboard bow;" answered at pilot-house, "Aye! aye!" This was 5 or 6 minutes before collision, I should judge. Saw a green and white light dis-

53 tinct. Saw no red light at the time. After the Northampton blew her whistle I saw her red light. The green shut out, and the other came in. This was almost the instant of the blow. I stood there then till the collision. Went into her at about right angles, on her port side abaft the smoke-stack. Cut into her about half way through. Stayed in her, I should think, over three-quarters of an hour. I believe it was the flood tide, and run to the westward. Heard one blast from Northampton's whistle, and immediately after heard two blasts from Continental. This was just before the collision—all in a heap. It was all at once, as near as could be. When I first saw the green and white lights I should judge they were a mile and a half off, may be further—hard to judge in the night. Saw Stratford light about time first saw the Northampton's lights. It was to seaward of latter. We had passed the New Haven light when I first saw the Northampton's. It had gone out of my sight. I was looking ahead. (It is conceded that the Continental had proper lights.)

Cross-examination by Mr. Donahue:

Passed the New Haven light on our port bow from a half to

54 three-quarters of a mile. Don't know how we were heading. Did not see Stratford light before New Haven light. I saw the Stratford light and Northampton's lights about together. The Stratford light bore ahead a point or point and a half off our starboard bow. The Northampton's lights bore from two and a half to three points off starboard bow, should judge, and so continued till the whistle blew. As near as I can judge, then, and now, the vessels were about a mile and one-half apart when I first discovered the Northampton's lights. I did not see a sail, but the lights, and supposed it was a sail vessel.

FREDERICK W. MILLS, by Mr. Benedict:

Was wheelsman on the Continental at time of collision. Took the wheel at the dock; kept it till collision. In the pilot-house were Captain Bown's pilot Woolgamarth, Richardson, the other wheelsman, Mr. Horton, and myself. Richardson, Horton, and the pilot left. Richardson left at Beach buoy, and the pilot and Horton left after we passed Pardee's buoy. I saw the lights that proved to be the Northampton's. Heard the report of lookout, "Sail off starboard bow." Captain answered. I looked and saw two lights, green and white, on our starboard bow, between two and three points, I should think. This was in the neighborhood of four or five minutes before the collision, I should
55 judge. I should judge a mile or a mile and a half off. Heard one blast of the Northampton's whistle. We directly responded with two. I mean immediately. From her whistle should think not more than half a minute to collision. When we first saw the Northampton's lights we were just coming up on our sound course. We did not get on our sound course before the collision. After the lookout reported the vessel, the captain took up his glass and looked at her, and told me to keep her off. I starboarded my wheel, and kept off half a point. Then he told me to steady. I did so. While we were doing this, steadying, we received her whistle. We responded, and rung four bells promptly. Our sound course, after we get out beyond shoal ground, is southwest three-quarters W. to Stratford. We did not get to that by a point and three-quarters when the collision occurred. The only change we made was when the captain told me to keep her off half a point and steady. We had a port wheel when we came together—five or six spokes to port. Saw a red light after the Northampton's whistle blew; could not see her green light. I saw she had changed her course, and opened her red light to my view. This not more than half a minute before collision. It was very sudden. Struck nearly athwartships as we could, I
56 should think. When we came into her we were heading S.W. by S. Saw Stratford light. The Northampton's light was inside of that. From time I first saw the Northampton's lights till she blew her whistle, was two or three minutes, I should judge. We always run down past New Haven light. Always get it four or five points abaft the beam before we let her come up. We happened to run out a little further than usual that night. The captain timed her. When we passed Pardee's buoy it was eight minutes to one. When we began to haul up it was one minute past one. I looked at the clock after collision—it was four minutes past one; half a minute might have elapsed after collision before I looked.

Cross-examined by Mr. Donahue.

S. half W. sometimes quarter; last course to New Haven light; continued this to Pardee's buoy, then changed to S. S. W., and run nine minutes; then we began to haul upon our sound course. The pilot left immediately after we passed Pardee's buoy, before we commenced hauling up on our sound course. After we run out the nine minutes, we haul upon our sound course gradually. We had run out our S. S. W. course before we saw the lights; had got no order before we saw the lights; was in the act of hauling; had moved the wheel;
57 captain said we were out; think he said let her come up from S. S. W. to S. W. three-quarters W., two points and three-quarters. We might have come up a point and a half about, when we saw the light. She was then swinging slowly. Then I checked her. Stratford light then bore about two points on our starboard bow, eleven or twelve

miles off. The Northampton's lights bore on our starboard bow, three points, about one to one and a half miles off. Then I received the order to keep off; we did keep off half a point; checked her then by captain's order; kept her there till collision. The lights of the Northampton, at the time I checked her, bore about three points on our starboard. When we first saw the Northampton's lights, they bore between two or three points on our starboard bow; Stratford light, one to two points. When we got her whistle, her light bore about three points, and Stratford light two points; had to put my wheel a little to port to check or steady her. I got no other order till the whistle blew; cannot say how fast we were going.

HENRY W. STARR, by Mr. Benedict:

Was passenger on the Continental at the time of collision; saw the collision; saw the Northampton's light before the collision; was standing on the promenade deck, just at the entrance of the ante-room,
58 abaft where the lookout stood. I heard the lookout report a vessel or sail on starboard bow. I looked up and saw two lights, green and white; saw no red light at that time; kept my eye on the lights; saw they were apparently moving towards us; heard no whistle till she was close aboard of us; heard one then from the Northampton; immediately heard the Continental respond with two whistles; heard no other from the Northampton; immediately after the whistle, saw the red light; up to that time she appeared to be passing to starboard of us. The moment she headed up she of course shut out her green light. I did not see them both at the same time. From the Northampton's whistle to collision, was from quarter to half a minute, I should judge. The Continental struck her about at right angles. I don't recollect whether I heard bells on the Continental or not.

Cross-examination waived.

FRANKLIN PECK, by Mr. Benedict:

Engineer in chief on the Continental; had charge of the engine at that time; have been chief engineer between six and seven years; first order I received from the pilot-house was to slow and stop; they came immediately together, two pulls at one bell. I stopped the engine; right after that got two bells to back. I reversed the engine as soon as
59 I could. All the bells came near together. Got her back three-quarters of a turn when I heard the crash; heard two whistles from the Continental; heard none from the other boat; heard the two whistles right in between the bells. Our whistle is about twenty feet over my head. From dock to accident, I was in the engine-room. We were running about ten to twelve miles an hour. Our engine was in good order.

Cross-examined by Mr. Donahue:

Our advertised hour for sailing is eleven o'clock; left that night about twenty to twenty-five minutes to one; went down the harbor with engine throttled down; went slow till we got past the long dock a mile or so. We go down, after we get past the piers, eight to ten or twelve miles per hour. After we get out the harbor we increase speed. From long dock out to light-house, don't know the distance. Shutting the throttle slows the engine; this takes about three seconds; to stop the engine, five or ten seconds more, i. e., unhooked. The water keeps the engine in motion. To get the engine reversed, will take from quarter to half a minute, i. e., to get the engine moving back; it might have taken a little

less than quarter of a minute to get her back—three-quarters of
60 a revolution out of her. From the time the first bell struck till we had got the engine three-quarters of a revolution back, was perhaps a minute. The two whistles came between the two bells to slow and stop, and the two to back.

WILLIAM T. SMITH, by Mr. Benedict:

Was steward on the Continental at the time of collision. Was in my room abaft the paddle-box, on the starboard side; my room is outside on the guard. I did not see the collision. I heard one whistle from the Northampton and two from the Continental, right in succession; this was all the whistles I heard; the single one from the Northampton first. During the time after the whistles felt the reversal of the engine. From first whistle till collision, half a minute, perhaps—not over three quarters, I should judge.

PETER A. WOOLGAMARTH, by Mr. Benedict:

Pilot of the Continental. At time of collision was in the pantry; was there before collision; run out just before collision; went there to get something to eat. That was my usual time to get something to eat; stand pilot rest of the night. Did not see the Northampton nor the collision.

Cross-examined by Mr. Donahue:

61 I left the wheel a minute after we passed Pardee's buoy; don't recollect that I saw Stratford light before I left the wheel. One of the Hell Gate pilots left with me at the same time; he stopped on the way. Richardson left before I did.

CAPTAIN JOHN G. BOWNS, by Mr. Benedict:

Captain of the Continental; have been for five years. Been on the line 30-odd years. The Continental will go 16 or 17 miles per hour; she was running at this time about 12, I should think. I saw the Northampton that night. When I first saw her I supposed she was a vessel; she proved to be the Northampton. When we had run nine minutes from Pardee's buoy—on that course we run S. S. W.—saw the Northampton's lights. Supposed it was a sailing vessel because she had no proper lights for a steamer. Saw her green and white light; she had no stern light. Sometimes, in a sailing vessel, they come forward and stick out a white light, when they get a little frightened. Sometimes they have a light forward to overhaul the anchor chain. Did not see any red light till she blowed her whistle. When I first saw her, she bore two and a half points on our starboard bow; she was reported by the for-
62 ward deck lookout. He reported her "A vessel off the starboard bow." This was about four and a half minutes before the collision. Saw the Stratford light when I saw her; she ranged inside of Stratford light. I stood in the wheel-house on the port side of the wheel; Mills, wheelsman, was in the pilot-house with me. This was after we had run out the nine minutes; it carried us about four minutes outside the New Haven light. The light bears E. N. E. when we have run past Pardee's buoy five minutes; then we run four minutes more that night. At the end of this nine minutes I told the wheelsman to haul her up on the course for Stratford; I looked at the clock and told the wheelsman we were out; it was one minute past one. We began to haul her up when the deck watch reported the vessel; I looked at her

with my glass. We run along three or four minutes, and then this vessel bore off from our starboard bow, about three points; then she blew one whistle, and turned around, and I saw her red light. I blew two whistles and stopped the boat; rung four bells, one to slow, and one to stop, and two to back. I sounded my whistles at once, as soon as her's had done. Heard no whistles after that. From her whistle, it was from a quarter to half a minute to the collision. We came on her
63 at right angles; when she was coming for us I suppose she was running at eight and a half or nine knots; I don't know her speed. When I first saw her I told the wheelsman to steady her and not let her come up any more on her course; don't recollect giving any other order. I did tell him to keep her off a little; told him to steady first, and then told him to keep to the southward a little. I noticed he hove the wheel over to starboard; that would swing her to southward; then I said steady her again, for I supposed we were off enough to clear the vessel and give her a good wide berth. I was not hold of the wheel; I was standing looking on. I took hold of the wheel when I saw the vessel was crossing our bow; we hove the wheel over to port to give all possible chances. We were close together; might have been fifty or seventy-five feet from her—seventy-five feet, I should judge—very close. It's hard to judge of distances. A lookout reports a steamer as a steamer, and a vessel as a vessel; all he knows by is the lights; at night, he reports four lights as a steamer, and two lights as a vessel.

Cross-examined by Mr. Donahue:

If the lookout sees a steamer he reports her as such. If the vessel seen has one colored and only one bright light, he reports her as
64 a sail vessel. That's his orders. I know of no rule allowing a sailing vessel to carry a bright light. I gave some report to the reporters after the collision. I was not under oath then. I didn't want to mislead them. I gave it to him to publish. The reporter is in court. I didn't read it after it was published. (Reporter's statement read by Mr. Donahue.) I did not make the statement about the red and green light. (Witness reads the statement.) I don't see anything to correct except that about red and green light. I intended to give a correct statement but did not pay much attention to it in the excitement of the moment. This statement was likely made the next day. The speed I have given is through the water. Started at Pardee's buoy to run S. S. W. When we started on our sound course we should be S. W. three-quarters W. I think I had seen Stratford light before I left my S. S. W. course. It bore three or three and a half points off our starboard bow. I had neither seen or heard report of the Northampton's lights till we left our S. S. W. course. When the Northampton was reported we had, I suppose, hauled up a point or point and a half. The Stratford light was bearing about two points off starboard bow, as near as I could judge. It was about ten miles off. The Northampton's lights then bore,
65 should think, three points on our starboard bow. She might have been three or four miles off; not so far, perhaps; should judge four miles. We checked her from swinging then after the vessel was reported. I looked at her through the glass and told the wheelsman to steady her. We had then got within a point and *and* a quarter of our sound course. We continued our course till the whistle blew. Was 58 years years old last September. The first that I supposed she was a steamer was when she blew her whistle. It *it* admitted that the wind that night was N. N. E.

Claimants rest.

Libellants resume.

JEROME B. LUCKE, by Mr. Ingersoll:

Am night editor in New Haven for New Haven Courier. In October last was reporter for Palladium. I asked Captain Bowns for the facts about this collision; think it was the next evening. He gave them. This is his statement as near as I can remember. I wrote it out just as it is here, if the types were set right. "From Captain Bowns, who was in the pilot-house of the Continental at the time of the occurence,
66 we obtain the following: When we hauled our course around the shoal ground we made the propeller, as it proved to be, about two points of the starboard bow. The forward-deck watchman reported a sail vessel off the starboard bow. We judged her to be such from the lights which were red and green. No head or stern lights were visible. We supposed she was going northward of us and we canted a little to southward to let her pass. Right after this we heard a whistle when we were close together, and then we immediately blew two whistles as we could not pass to the right, the boats being so close together; and we stopped the boat and rang the bells to go back."

Cross-examined by Mr. Benedict:

I got the statement, I think, at the office of the Continental a couple of days after. Captain was a little excited and not paying strict attention. Several persons were questioning him about it at the time.

By Mr. Ingersoll:

I think I took his very words. I wrote it sentence by sentence, as he said it. I read it to him and I think he said it was right. I only took what he said to me.

67 *Decision.*

U. S. district court, district of Conn.—In admiralty.

THE NEW HAVEN STEAM TRANSPORTATION Company
vs.
THE STEAMER CONTINENTAL.

AUGUST, 24, 1869.

SHIPMAN, J.:

On the 23d day of October, 1868, a little past one o'clock in the morning near the mouth of New Haven Harbor, a collision took place between the propeller Northampton, owned by the libellants, and the steamer Continental, by which the former was sunk. The Northampton was on her trip from New York and bound for New Haven. The Continental was on her trip from New Haven to New York, and had just come out of the harbor and hauled up, or nearly, upon her sound course. The latter struck the Northampton on her port side, a little abaft her midships, nearly square on, but somewhat angling aft, cutting into her side so that she sunk in half an hour. For this the libellants have brought the present suit.

In the view I take of the case it is unnecessary for me to discuss the facts at length. I merely state the following which I regard as
68 proved beyond dispute:

First. That immediately after the Continental had come out of

the harbor and hauled up, or nearly, on her sound course, the vessels were approaching each other, nearly end on, so as to involve risk of collision.

Second. That at this point of time the vessels were far enough apart to have taken the proper course, and avoided the collision by each porting her wheel, and thus passing each on the port side of the other.

Third. That from this point of time forward till the collision, those in charge of the Northampton saw all the lights of the Continental, and knew the vessel that was approaching.

Fourth. That from this point of time forward till just before the collision, the Northampton had no stern light set, though her bow and side lights were burning; and, that those in charge of the Continental saw only her green and bow lights, till the Northampton sounded her whistle, ported, and shut in her green and showed her red light, when the vessels were very near together.

Fifth. That several minutes before the collision, the lookout
69 of the Continental discovered the green and bow lights of the Northampton, a little on the starboard bow, and reported her to the pilot-house as a sail on the starboard bow.

Sixth. That both the lookout and those in charge of the wheel of the Continental mistook the character of the Northampton, and supposed that she was a sailing vessel until she sounded her whistle.

Seventh. That, in consequence of this mistake, the wheel of the Continental was starboarded a little, with the intention of passing the approaching vessel on her starboard side, but as the Northampton had ported, and the vessels were approaching each other rapidly, the bow of the Continental struck the port side of the Northampton, as already stated.

From these facts it is obvious that the Northampton was in fault, in having no stern light. She was running in direct violation of law, which required her to have a central range of two white lights. (U. S. Stat's at Large, p. 228, sec. ii.)

But it is contended that as those in charge of the Continental saw the bow and green lights of the Northampton, they ought to have known that she was a steamer, and have ported her wheel in obedi-
70 ence to the rule. This claim is put, on the ground that sailing vessels in such inland waters carry no white lights at the bow, and that therefore the alleged mistake was inexcusable. But I do not think that this argument ought to prevail. The Northampton comes into court clearly in fault, and the officers of the Continental allege that they were deceived and misled in consequence. They assert that they supposed her to be a sailing vessel, and had she been, they would have undoubtedly cleared her by the course they took. It is not surprising that they did mistake her, as the presence of a white light for a short period of time on the forward part of a sailing vessel, cannot be an unusual or extraordinary circumstance. It is a much more likely thing to occur than for a steamer to be pursuing her course and rapidly approaching another steamer with one of the lights required by the statute hauled down, and for some time, and that a critical one, wholly out of sight.

But for this clear fault of the Northampton, which was well calculated to mislead, and by which the officers of the Continental assert
71 that they were misled, the latter would, in the event the collision had occurred as it did, have been manifestly in the wrong and responsible in damages. It would have been her duty to have ported her wheel, and each boat would have passed on the port side of the

other. Failing in this she would have been condemned as in fault. As it is, though she made a mistake, I think she was led into that error by the fault of the Northampton, and that therefore the latter has no claim against her. I have not examined the evidence critically to see whether or not the Continental might not have possibly made such a maneuvre after the Northampton's whistle sounded as to have cleared her. From the whole proof on this point, I am satisfied that when this whistle first sounded the vessels were very near to each other and that the danger was imminent. It is a well-settled rule in cases of collision, that where a vessel has been brought into danger by the fault of another, she will not be held to a rigid responsibility for errors committed in a moment of alarm, peril, or pressing exigency. Let the libel be dismissed with costs.

Decree.

72 United States district court.

NEW HAVEN STEAM TRANSPORTATION COMPANY
vs.
THE STEAMER CONTINENTAL.

This cause having been heard on the pleadings and proofs, and argued by the advocates of the respective parties, and due deliberation being had, it is now ordered, adjudged, and decreed by the court, that the libel filed in the cause be dismissed, with costs to be taxed against the libellants, unless an appeal be taken from this decree.

Notice of appeal.

United States district court, Connecticut.

NEW HAVEN STEAM TRANSPORTATION COMPANY
vs.
THE STEAMER CONTINENTAL, HER TACKLE, &C.

SIR: Please to take notice that the libellants appeal from the decree of the court herein.

Dated August 26, 1869.

Yours, &c.,

C. R. INGERSOLL,
P'r for Libellant.

73

To the CLERK U. S. district court, district of Connecticut.

Petition of appeal.

To the honorable the circuit court of the United States for the district of Connecticut, in the second circuit:

The petition of appeal of The New Haven Steam Transportation Company, respectfully shows:

That the petitioners, in the month of January, 1869, filed their libel in the district court of the United States for the district of Connecticut against The Steamer Continental, her engines, boiler, tackle, &c., claiming to recover damages for the sinking of the steamer Northampton, by collision, on the 22d day of October, 1868, the libel setting forth the particulars, and claiming that the collision was caused by the neglect of

those on the steamer Continental, and claiming damages to the sum of one hundred thousand dollars, and praying that the Continental be seized and condemned therefor.

That said steamer Continental was seized and the New Haven Steamboat Company duly appeared and claimed the steamer Continental, her engines, &c., and put in their answer denying the statements of the libel, and setting up that the collision was caused by the act of the libellants or their agents.

74 That such proceedings were had, that the said cause was tried in due form, and after deliberation, by the said district court of the United States for the said district of Connecticut, the said court did, on the 24th day of August make decree that the libel should be dismissed with costs. Which decree the libellants claim is erroneous in all its parts.

Whereupon the libellants pray that the said circuit court would be pleased to review the said cause on new pleadings and proof, and on such proof as are already in, and to reverse and annul said decree, and restore the libellants to their rights in the premises.

C. R. INGERSOLL.

C. R. INGERSOLL, *Proctor.*

Stipulation upon appeal.

District court of the United States for the district of Connecticut, in admiralty.

Whereas an appeal has been taken from the decree of this court made on the 24th day of August, in a certain cause wherein The New
75 Haven Steam Transportation Company is libellant, against The Steamboat Continental, her tackle, &c., and The New Haven Steamboat Company is claimant:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of two hundred and fifty dollars to pay all damages and costs which shall be awarded against the said appellant by the final decree rendered by the appellate court.

HENRICK P. FROST.
CHA'S S. LEETE.

Taken and acknowledged this 4th day of March, 1870, before me.
C. R. INGERSOLL,
U. S. Com'r.

I, Loren P. Waldo, clerk of the district court of the United States for the district of Connecticut, do certify that the within and foregoing is a true copy of all the records and files of the above-entitled cause in this court.

In testimony whereof I have set hereto my name officially, and the { SEAL OF THE DIST. C'T CONN. } seal of said district court, at Hartford, in said district, this 19th day of April, A. D. 1870.

Attest:

LOREN P. WALDO,
Clerk of District Court for said District.

76 At a circuit court of the United States of America, appointed by law to be held, and held at Hartford, within and for the second

circuit, and district of Connecticut, on the third Tuesday, to wit, the 20th day of September, A. D. 1870:

77 *Appeal in admiralty from the district court.*

THE NEW HAVEN STEAM TRANSPORTATION Company
vs.
THE STEAMBOAT CONTINENTAL.

This cause coming on to be heard in this court at the present term, and the parties having been fully heard by their counsel, the following decree was passed and entered, viz:

At a stated term of the circuit court for the district of Connecticut, in the second circuit, held at the United States court-room, in the city of Hartford, on Tuesday, the twentieth day of September, 1870—

Present, Hon. Lewis B. Woodruff, circuit judge.

THE STEAMBOAT CONTINENTAL, HER ENGINES, &c., The New Haven Steamboat Company, claimants and appellees.
ads.
THE NEW HAVEN STEAM TRANSPORTATION Company, libellants & appellants.

The appeal of the appellants in this cause coming on to be heard, after hearing Charles J. Ingersoll, advocate for the said appellants, and T. C. Doolittle, advocate for the appellees, and after due deliberation thereon,

78 it is ordered, adjudged, and decreed, that the decree of the district court of the United States for the district of Connecticut, made and entered in this cause on the twenty-fourth day of August, 1869, dismissing the libel herein with costs, be and the same is hereby, affirmed.

And it is further ordered, adjudged, and decreed, that the said appellees do recover against the appellants their costs in the said district court, taxed at seventy-five dollars and sixty cents with interest thereon from 24th day of August, 1869, to the date of this decree, amounting to eighty dollars & fifty-six cents, and also their costs in this court taxed at thirty-three and $\frac{30}{100}$ dollars, and which said costs, in the aggregate, amount to one hundred thirteen & $\frac{86}{100}$ dollars.

And it is further ordered, adjudged, and decreed, that unless the last mentioned sum, with interest, be paid, or an appeal be taken from this decree within the time limited and prescribed by the rules and practice of this court, the appellees have execution to collect the same, according to law and the course and practice of this court.

L. B. WOODRUFF,
Circuit Judge.

79 And thereupon, and within the time limited and prescribed by the rules and practice of this court, the said appellants duly filed in court their appeal, petition of appeal, citation to the appellees, with return of service endorsed thereon, and bond with sureties approved by the judge of this court, in the words and figures, following:

Appeal.

U. S. circuit court, district of Connecticut.—In admiralty.

NEW HAVEN STEAM TRANSPORTATION COMPANY, libellants,
vs.
THE STEAMBOAT CONTINENTAL AND THE NEW Haven Steamboat Company, claimants.

The above-named libellants, conceiving itself aggrieved by the final decree entered on the 20th day of Sept., 1870, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States, and prays that its said appeal may be allowed,
80 and that a transcript of the record, proceedings, and evidence in the cause duly authenticated, may be sent to the Supreme Court at the term thereof, to be held at Washington, on the first Monday of December next.

By C. R. INGERSOLL,
Its Proctor.

Bond on appeal.

Circuit court of the United States, district of Connecticut.

THE NEW HAVEN STEAM TRANSPORTATION COMpany, libellants and appellants,
vs.
THE STEAMBOAT CONTINENTAL AND THE NEW Haven Steamboat Company, claimant and appellees.

Know all men by these presents that we, Charles S. Leete and J. B. Sargent, of the city and county of New Haven, in the State of Connecticut, are held and firmly bound unto the above-named The New Haven Steamboat Company, in the sum of two hundred and fifty dollars,
81 to be paid to the said appellees, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, jointly by these presents, sealed with our seals, and dated this 17th day of October, 1870.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States, at the city of Washington in the District of Columbia, to reverse the decree rendered in the above suit by the circuit court of the United States for the district of Connecticut:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute its appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

CHA'S S. LEETE. [SEAL.]
J. B. SARGENT. [SEAL.]

Sealed and delivered, and taken and acknowledged this 17th day of October, 1870, before me.

[U. S. COM'R SEAL.] JOHNSON T. LATT,
U. S. Commissioner, District of Connecticut.

82 Approved:

W'M D. SHIPMAN, *Judge.*

Citation.

By the Hon. W'm D. Shipman, one of the judges of the circuit court of the United States for the district of Connecticut.

To the New Haven Steamboat Company:

Whereas the New Haven Steam Transportation Company has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the district of Connecticut, dismissing its libel against The Steamboat Continental, and you as the claimant of said steamboat, and has filed the security required by law; you are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the first Monday of December, 1870, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at Hartford, in said district, the 18th day of October, 1870.

W'M D. SHIPMAN, *Judge.*

83 *Acknowledgment of service of citation.*

Received for the New Haven Steamboat Company, Oct. 18, 1870, a copy of the above citation and of the appeal filed in this cause.

T. E. DOOLITTLE,
Proctor for Claimant.

Petition of appeal.

THE NEW HAVEN STEAM TRANSPORTATION Company, libellants and appellants,
vs.
THE STEAMBOAT CONTINENTAL, THE NEW Haven Steamboat Company, claimants and appellees.

To the Honorable the Supreme Court of the United States:

The appeal of the New Haven Steam Transportation Company, the above-named libellants and appellant, respectfully shows: That, on the day of January, 1869, the said libellant filed its libel in the district court of the United States for the district of Connecticut against The Steamboat Continental, her tackle, &c., in a cause civil and maritime, for the recovery of damages alleged to have been sustained by said libellants to the propeller Northampton and her cargo, by collision with the said steamboat Continental off the port of New Haven, in Long Island Sound, and that the said steamboat Continental was arrested upon process issued upon said libel and was discharged on the above-named claimants' filing its claim and entering into stipulations, and said claimants thereupon filed its answer to said libel, and the said libellants replied thereto, and such proceedings were had that, on the 24th day of August, 1869, a final decree was made and pronounced therein by the said district court, dismissing said libel with costs.

84

And that after said final decree your petitioner duly appealed there-

from to the circuit court of the United States for the district of Connecticut, and the said cause was removed thereby into the said circuit court, and there tried anew, and such proceedings were had in the said circuit court, that afterwards, on the 20th day of September, 1870, the said circuit court made a final decree in said cause, whereby it was decreed that the said decree of the district court be in all things
85 affirmed with costs; which said decree of the said circuit court is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of the said circuit court and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause, may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the cause anew, and that the said decree of the circuit court may be reversed and every part thereof, and a decree made condemning said steamboat Continental pursuant to the prayer of said libel, or such other decree as to the said Supreme Court shall seem just.

The New Haven Steam Transportation Company,
By C. R. INGERSOL,
Its Attorney and Proctor.

Dated Sept. 20, 1870.

C. R. INGERSOLL,
Proctor for Appellant.

86 Whereupon their appeal is allowed to the Supreme Court of the United States.

Attest:

LOREN P. WALDO, *Clerk.*

(Indorsement on cover:) No. 304. The New Haven Steam Transportation Company, lib'ts, appellants, vs. The Steamboat "Continental," The New Haven Steamboat Company, claimant. Connecticut C. C. U. S. Filed 22 November, 1870.

Hoggson & Robinson, Law Printers, 297 Chapel Street, New Haven.

Supreme Court,

OF THE UNITED STATES.

THE NEW HAVEN STEAM TRANSPORTATION COMPANY, LIBELLANT AND APPELLANT,

vs.

THE STEAMBOAT CONTINENTAL AND THE NEW HAVEN STEAMBOAT COMPANY, CLAIMANT AND APPELLEE.

Appellants' Brief.

BRIEF.

This is an appeal from a decree of the Circuit Court of the United States, for the District of Connecticut, affirming a decree of the District Court, for that district, dismissing the libel in the above entitled case.

The libel is, *in rem*, for collision occurring in Long Island Sound, near the entrance to New Haven harbor, during the night of October 22d, 1868.

By the collision, the libellant's Propeller, Northampton, being on her regular trip from New York to New Haven, was sunk; she having been struck amidships, nearly at right angles, by the Steamer Continental, bound, also on her regular trip, from New Haven to New York.

The vessels were both owned in New Haven, by different lines engaged in the carrying of passengers and freight between New Haven and New York.

A boat of each line left each of these places every night, and were therefore accustomed to meet at about the same time in about the same locality, (pp. 3, 27).

The wind, at the time of the collision, was N. N. E. (p. 65,) and the weather, t' ough cloudy, not unfavorable for seeing lights at ordinary distances, (pp. 4, 29).

The Pleadings.

The Libel alleges: (p. 4, 5, 6.)

That as the Propeller approached the entrance of New Haven harbor, she saw, off her port bow, the lights of the Steamer coming down the harbor;—that after the Steamer had cleared the harbor and hauled up on her Sound course for New York, the heads of the two vessels were brought directly toward each other;—that the course of the Propeller was altered about a point easterly so as to pass to the right, or on the port side of the Steamer;—that when they had approached to within a half to three-quarters of a mile of each other, the Propeller blew one blast of her steam whistle to signalize that she should pass to the right;—that she was about to repeat the signal when the Steamer gave two blasts of her whistle and sheered to the Southward;—that the Propeller immediately gave another single blast of her whistle, and put her helm hard aport, but notwithstanding these precautions, she was run into by the Steamer, at nearly right angles, and sunk.

The complaint of the libel is, that as the vessels were approaching each other, it was the duty of each to pass on the port side of the other, and that the collision was caused by the Steamer insisting upon passing on the starboard side of the Propeller, in violation of this duty.

The Answer alleges; (pp. 28, 29).

That the Steamer, when coming down the harbor, probably was seen by the Propeller, off the Propeller's port bow, but denies that she was so seen after she had hauled up on her Sound course, or that she was approaching directly toward the Propeller, and avers that, after hauling on her Sound course, she was well on the Propeller's starboard bow.

It admits that the Propeller gave one blast of its whistle, but avers that the Propeller, about the same time, wrongfully put her helm to port and attempted to cross the Steamer's bow, and pass on her port side—that she gave two blasts of her whistle to indicate it was impracticable to pass on the port side, but that, on observing that the Propeller had ported her helm, she, in fact, put her own helm to port and stopped her engines, but could not avoid the collision, (pp. 30, 31).

The Answer admits that the Propeller carried her colored lights, but denies that she carried any white light, either at stem or stern, (pp. 28, 29,) and sets up as an excuse for not signalizing the Propeller, that in consequence of her lights not being properly set and burning, the look-out, and those navigating the Steamer, supposed, and had good reason to suppose her to be a sailing vessel, (p. 32).

The Proofs.

For the Libellants, Joseph E. Stannard, the master of the Propeller, testifies that he was in the pilot-house, with her pilot, at the time of the collision—that as the Propeller was heading for New Haven Light, at the entrance of New Haven harbor, he saw the lights of the Steamer coming down the harbor—that the Steamer, having run out of the harbor, hauled up westerly, on her Sound course, and was then about three miles distant, heading directly for the Propeller—that the boats continued on these courses until about three-quarters of a mile apart, when, the Steamer being a very little on the Propeller's port bow, nearly ahead, the Propeller gave one blast of her whistle and changed her course one point easterly, so as to pass on the port side of the

Steamer—that the Steamer made no response to the whistle for nearly or quite a minute, when she gave two whistles. That the Propeller answered with one, the bell was rung to stop her engines, and her wheel hove hard aport. That the Steamer swung off to the southward, and came into the Propeller, striking her on the port side, nearly amidships, and nearly at right angles, (pp. 35, 36).

He further testifies, that he generally met the Steamer (Continental) on every trip, (p. 38.)

His testimony is supported by the testimony of *Arthur Mellar*, the Pilot, (p. 39,) of *Walter C. Post*, the bow watchman, (p. 42,) of *Edgar Beach*, the engineer, (p. 45,) of *Corydon L. Combs*, the deck watchman, (p. 46,) of *John Adams*, the steward, (p. 48,) and of *David Lewis*, a passenger, (p. 48,)—their testimony on the same points being substantially to the same effect.

The testimony of the last named witness, (David Lewis,) has an important hearing upon the question, whether the Steamer was on the Propeller's starboard bow, as the Answer claims. The witness was looking out of the starboard gangway of the Propeller just before the collision, and saw the New Haven Light ahead, but saw no lights of any vessel, (p. 49).

Walter C. Post, (p. 42,) testifies, that just before the collision he looked at the lights of the Propeller—that the bow light and side lights were burning brightly—that the stern light was dim, and he went aft and lowered it, picked the wick, and hoisted it again—and while doing this heard the Propeller's first whistle.

No witness, but Post, noticed the dimness of the stern light. The Captain and Pilot of the Propeller New Haven, which passed the Northampton off Stratford Point, (8 or 10 miles from the place of collision,) testify that all her lights were burning brightly at that time.

Alpheus W. Snow, p. 49.
Richard Lane, p. 50.

But there is no conflict of evidence whatever upon the fact that the bow and side lights of the Propeller were burning brightly all the time.

For the Claimants, John G. Bowns, (p. 61,) Captain of the Steamer, testifies, that he was in his wheel-house, with the wheelsman, at the time of the collision—that the deck watch reported the Northampton's lights when the Steamer began to haul up on her Sound course, after running nine minutes from Pardee's buoy, (p. 62,)—that he (the witness) saw her white (bow) and green (starboard) lights—that he supposed it was a sailing vessel, because she had no proper lights for a steamer—that when first seen the lights bore about three points on the Steamer's starboard bow, (p. 65,) and three or four miles off, and that this was about four and a half minutes before the collision, (p. 62,)—that the Steamer run along three or four minutes, and the Propeller's lights still bore off the Steamer's starboard bow about three points—"then, she blew one whistle and turned round, and I saw "her red light," (p. 62,) and "the first that he supposed "she was a steamer, was when she blew her whistle," (p. 65,) that he then blew two whistles and stopped the boat.

The witness further states that "the Sound course," (after running out the S. S. W. course from Pardee's buoy in the harbor,) is S. W. ¾ W., (p. 64,)—that when the Propeller was reported, the Steamer had hauled up a point, or a point and a half, (p. 64,)—that he "told the "wheelsman to steady her, and not let her come up any "more on her course—and didn't recollect giving any "other order," (p. 63). "I did tell him to keep her off a "little ; told him to steady first, and then to keep to "the southward a little," (p. 63).

He also says that "if a vessel seen by his look-out "has one colored, and only one bright light, he reports "her as a sail vessel. That's his orders." (p. 64). "At "night he reports four lights as a steamer, and two lights "as a vessel," (p. 63).

The witness was, in this connection, shown the following account of the circumstances of the collision,

which was published in a New Haven newspaper, and which the night editor of the newspaper testified, (p. 66,) was taken from the witness, the next evening after the collision, "sentence by sentence."

"From Capt. Bowns, who was in the pilot-house of "the Continental at the time of the occurrence, we obtain "the following: When we hauled our course around "the shoal ground, we made the Propeller, as it proved "to be, about two points off the starboard bow. The "forward deck watchman reported a sail vessel off the "starboard bow, we judged her to be such from the "lights, which were red and green. No head or stern "lights were visible We supposed she was going north-"ward of us, and we canted a little to the southward to "let her pass. Right after this we heard a whistle, when "we were close together, and then we immediately blew "two whistles, as we could not pass to the right, the "boats being so close together; and we stopped the "boat and rang the bells to go back."

The witness denied that he made "the statement about "the red and green lights," but saw nothing else to correct, (p. 64).

Frederick W. Mills, (p. 54,) wheelsman of the Steamer, testifies that he was in the pilot-house with the Captain, that he saw the Propeller's white and green lights, four or five minutes before the collision, between two and three points on the Steamer's starboard bow, (p. 55)—that the Steamer had then run out her S. S. W. course from Pardee's buoy, and had come up on her Sound course about a point and a half, (that is to S. W½ S.) then he checked her, and then kept off half a point, (that is to S. W. by S.) and kept that course without any change of helm till the collision, (p. 57).

That when the Propeller gave her whistle her lights continued to bear three points on the Steamer's starboard bow, (p. 57,) and after the whistle saw the red light, (p. 55)

William S. Grant, the look-out of the Steamer, testifies, (p. 52,) that he saw the white and green light of the

Propeller, distinct, five or six minutes before the collision, bearing two and a half to three points off the Steamer's starboard bow, and they so continued till the whistle blew, (p. 54,) and then he saw her red light. When he saw the white and green lights he reported that he saw "a sail."

Henry W. Starr, (p. 58,) testifies that, being on board the Steamer, he saw the Propeller's white and green lights, when she was reported by the look-out, kept his eye on them, and "saw that they were apparently moving "towards us."

David G. Horton, introduced as a Hell Gate Pilot, testifies, (p. 19,) that he was in the pilot-house when he first saw the lights of the Propeller—a white light forward, and a green side light—that they bore two and a half points on the starboard bow—and he guessed she was a sailing vessel, because she did not have any stern light—and that he left the pilot-house five to six minutes before the collision, (p. 51).

If the testimony of this last mentioned witness is to be relied upon at all, he must have seen the Propeller's lights several minutes before the look-out, or any one else on board of the Steamer saw them.

And if they bore two and a half points on the starboard bow, when he claims to have seen them, they must have bore directly ahead when the look-out and the others on board the Steamer saw them.

For *Peter A. Woolgermarth*, the Pilot of the Steamer, testifies, (p. 60,) that he did not see the Northampton, or the collision, for the reason that he "left the wheel a min-"ute after we passed Pardee's buoy. One of the Hell "Gate Pilots left with me at the same time."

Frederick W. Mills, the wheelsman, also testifies, (p. 54,) that the P lot and Horton left after we passed Pardee's buoy.

Pardee's buoy is where the harbor channel opens into the Sound, and from it a S. S. W. course is run for *nine*

minutes, (p. 62,) before the Sound course for Stratford Light is taken. And it was not until this last course was taken that the look-out, or Captain, of the Steamer saw the Propeller.

The Issue.

Upon this evidence, it is clear, the parties were at issue.

1. Upon the fact as to how the vessels approached each other.

For the Propeller, it was claimed that they were approaching substantially end on, so as to involve risk of collision, and that, therefore, it was the duty of both vessels to port their helms so as to pass to the right, or on the port side of each other, according to the Sailing Regulation, Art. 13. "If two ships under "steam are meeting end on, or nearly end on, so as to "involve risk of collision, the helms of both shall be "put to port, so that each may pass on the port side of the other."

For the Steamer, it was claimed that the Propeller was approaching in such a way as not to show her *red* light until it was too late to avoid the collision—that she was three points on the Steamer's starboard bow when first seen, *and so continued to be* all the while she was approaching, until she suddenly turned and attempted to cross the bows of the Steamer at right angles to the course the Steamer was running, and then, for the first time, disclosed her port, or red light, and blew her whistle.

2. As to whether the want of a stern light on the Propeller misled the Steamer to suppose the Propeller a sailing vessel, which she could pass on the star board side.

The Finding.

The District Court found the first issue in favor of the Propeller.

That is, it found, as "proved beyond dispute." *See Judge Shipman's decision. Record p.* 67.

"*First*,—That immediately after the Continental "had come out of the harbor and hauled up, or "nearly, on her Sound course, the vessels were ap- "proaching each other, nearly end on, so as to in- "volve risk of collision."

"*Second*, That at this point of time the vessels "were far enough apart to have taken the proper "course, and avoided the the collision, by each port- "ing her wheel, and thus passing each on the port "side of the other."

The second issue was found in favor of the Steamer.

But it was accompanied with the finding that, but for this fault of the Propeller, the Steamer would, "in the event the collison had occured as it did, "*have been manifestly in the wrong, and responsible* "*in damages*," (p. 71).

"It would have been her duty to have ported her "wheel and each boat would have passed on the port "side of the other. Failing in this she would have "been condemned as in fault," (p. 71).

For these reasons the libel was dismissed by the District Court, and the decree affirmed by the Circuit Court.

Errors.

The Appellant alleges for errors in the decree of the Circuit Court.

1. That upon the proof of the facts and circumstances of the collision, it should have been held and adjudged that the collision alledged in the libel, and the consequent damage and loss, was not caused by any negligence, improper conduct or other fault of the persons in charge of or navigating the Propeller.

2. That upon such proof it should have been help and adjudged that such collision was caused by the negligence, improper conduct and fault of those in charge of and navigating the Steamboat.

3. That upon such proof said libel should not have been dismissed, but the decree of the District Court should have been reversed, and a decree passed condemning said Steamboat to pay in whole or in part the damages sustained.

POINTS.

FIRST. Assuming that the Steamer could see only the bow and side lights of the Propeller, it was a fault on her part to act as if they were the lights of a sailing vessel.

A white light is prohibited to a sailing vessel under way.

She is forbidden to carry any other light than the green light on her starboard side, and the red light on her port side.

Sea-going steamers, and steamers under sail, are required to carry the single white light with the side colored lights.

Coasting and inland water steamers carry the colored side lights with the bow and stern white lights.

Act of Cong. April 29, 1864.
July 25, 1866.

The lights, therefore, which the Steamer saw, were lights which a sea-going steamer must carry, but which a sailing vessel *must never carry.*

And the Steamer assumed that the vessel carrying it was not the kind of vessel which the lights declared it to be, but was the kind of vessel which the lights declared it not to be.

This, the appellant submits, was not only negligence--but recklessness.

If a steamer sees a light which does not clearly indicate the character of the vessel carrying it, she has no right to jump to the conclusion that it is carried by a vessel of any particular class, and especially not of that class which is forbidden to carry such a light.

It is her duty to ascertain the truth by all the cautionary means in her power. She must use all necessary vigilance to discover whether the strange light is a fixed light or not—and if fixed, whether it is on a vessel in motion or at anchor—and if on a vessel in motion what is the course of that vessel as indicating whether she is moved by the wind or by steam. She must look for the strength of the light seen as distinguishing a regulation-light from an ordinary hand-lantern, commonly used about a vessel's deck—and watch for the sails of the vessel —her hull—the noise of her paddles, and the lights of her saloon, if a steamer—and for all the usual indications characterizing the different classes of vessels.

And if this inquiry cannot be made without slackening her speed, she must slacken her speed. If not without blowing her whistle, as a signal, she must blow her whistle. She has no right to go on at all if she is in any reasonable doubt on the subject.

If, without exercising all reasonable precautions, she insists upon going on, and a collision occurs, she takes the risk, and the fault is justly visited upon her.

In the *Gray Eagle*, 9 Wallace 505, that vessel was held to be in fault because she did not, by watching the bearings of the light of the *Perseverance*, discover that the light was in motion, and therefore could not be upon a vessel at anchor. And she was condemned as in fault, although the Perseverance was carrying a light she had no right to carry.

In *Nelson* vs. *Leland*, 22 How. 48, the Steamer claimed to have mistaken the light of the libellants' flat-boat for a landing place, but the Court say:

"Seeing the light ahead, the master, in the use of ordinary "caution, should have stopped his boat at once and reversed "her wheels, until the locality of the light was clearly ascer- "tained. It is no excuse that he mistook the light for a "place of landing. The commander cannot lessen his re- "sponsibility by alleging his mistake. He is bound to make "no mistake, for it is his duty to stop his boat where he doubts "until he ascertains the facts. Had this been done the colli- "sion could not have occured."

In *The Louisiana* vs. *Isaac Fisher, et al.*, 21 How. 1, the libellant's Schooner had no light whatever, and the Steamer, when she first saw the Schooner, was in doubt whether it was at anchor or under way.

"Notwithstanding the uncertainty in the mind of the officer "the vessel under his command continued on her voyage "with unabated speed. No order was given to arrest her pro- "gress till a collision with the Schooner had become in- "evitable. This was a grave error, and it was followed by "disastrous consequences for which the owners must render "indemnity."

In the *R. W. Burrowes, The Bordentown*, 7 Blatch. C. C. 375, says Judge Woodruff:

"I cannot wholly acquit the Bordentown of fault. She "saw through the darkness and rain, not far above the water, "two white lights. That she supposed they were upon two "vessels at anchor was not at all surprising. At the same "time the darkness and uncertainty were such as to call upon "her to use her utmost vigilance, and it is testified that the "shore on the one or the other side of the narrow channel "could be seen. Under such circumstances she ought to have "slackened her speed, on discovering these lights, and ap-

" proached with such caution that she might be prepared for
" further discovery, and thus avoid accident, if her judgment
" that the lights were on vessels at anchor proved a mistake."

In *The Birkenhead*, 3 W. Rob. 75, the Steamer was directed upon the supposition that a sailing vessel under way was at anchor, and proper precautions were taken under that hypothesis. The circumstances were such as might have occasioned a mistake. But the Judge of the Admiralty, with the advice of the Trinity Masters, condemned the Steamer to compensate for the collision, saying: "that she should "not have prosecuted her voyage in any uncertainty, "but should have eased or reversed her engines un- "til the fact was ascertained."

And in *The Martha Sophia*, decided in the Vice Admiralty Court of Lower Canada, 22 Law Reporter (March, 1860,) 668, a non-compliance with the Trinity House Regulations in respect of lights was held not to be in the way of a recovery for collision where the vessel with proper precautions could have been seen.

And such is the law of negligence everywhere. If a man goes upon a railroad track, with shut eyes, and deaf ears, and is run over, it is in vain for him to complain that the whistle was not blown.

If he hears the rumble of an approaching engine, and comes to the conclusion that it is merely the noise of a hand-car, because he does not hear the bell ring, and goes upon the track and damage results, it is to his own heedlessness that the damage is to be attributed—for by waiting a few seconds it could all have been avoided.

In the present case, no precaution whatever was taken by the Steamer to discover the character of the approaching vessel.

For it was manifest to the Steamer, or should have been, that the vessel was approaching, and was bound into New Haven harbor.

Her lights, the wheelsman of the Steamer says, (p. 57,) had the same bearing the moment before the collision as when he first saw them—which could not have been unless they were moving on a converging line.

Starr, a passenger on the Steamer, says, (p. 58,) that he kept his eyes on the lights, and they were apparently moving towards us.

Indeed the conduct of the Captain himself shows that it was manifest to him.

When the lights were discovered, he says the Steamer was coming up on her Sound course S. W. ¾ W. which was two points and three-quarters from the course she had been on, S. S. W.—that he let her come up a point, or point and a half, (p. 64,) and told the wheelsman to steady her, and not let her come up any more—then told him to keep to the Southward a little—*noticed that he hove the wheel over to starboard*—then to steady again, for he supposed *they were off enough to clear the vessel.* Why was all this done, if he did not know that the vessel was coming directly on the line of his Sound course?

Now it was negligence in the Steamer to be misled by the Propeller's lights because:

I. The Steamer knew that the Propeller was due at that place, at that time. The two boats were accustomed to meet on every trip of the Propeller, and were perfectly well known to each other. It was therefore the Steamer's duty to look out for the Propeller, just when and where the lights of this approaching vessel appeared.

It is difficult to believe, that under these circumstances, she did not know these lights to be the Propeller's lights as soon as they appeared. But if she is to be credited with such ignorance, it is not a

reasonable ignorance. She had every reason to know, by the simple fact of her experience, that the Propeller should be met at that place and time, and that it was no other vessel than the Propeller, which was then and there heading for New Haven.

But at least there was reason for a doubt, and, if so, it was clearly her duty to settle that doubt. This she could easily have done at once by a signal with her whistle. But the expediency of any such precaution, does not seem at any time to have occurred to those in charge of her. They did not allow any doubt whatever to enter their mind. They assumed at once that it was a sailing vessel thus coming toward them, right in the eye of the wind, and they adhered to that assumption stubbornly, until it resulted in disaster.

II. The Propeller's lights were seen by the Steamer for several minutes before the collision—(the Captain says 3 or 4—Horton says 5 or 6,)—and moving directly upon her. Is it credible that, during all this time, with the white light growing upon them every second, the men to whom the navigation of the Steamer had been entrusted, were not able to tell whether that light was a hand-lantern, in use about the deck of some sailing craft, or the regulation light of a steamer placed outside her stem?

Is it credible, that it did not at least excite in their minds a serious doubt, whether the light which they had so swiftly assumed to be the light of a hand-lantern, might not be the light of a steamer, and perhaps of the Propeller Northampton, which ought to be in just about that spot, at just about that time? and if they had any such doubt, that they did not adopt some precaution, such as slackening the speed of the Steamer, until they had determined the doubt?

If it is credible, they were not fit for the responsibility placed upon them, for it is clear that the delay of a few seconds only would have brought the stern light into view, and have averted the disaster.

The stern light of the Propeller was hoisted, and was burning brightly when the collision actually occurred. So testifies Post, the man who claims to have lowered the light—and it was seen burning brightly by other witnesses immediately after the collision.

Martin Higgins, p. 44.
Wales French, p. 47.
David Lewis, p. 49.

The District Judge says, in exculpation of the Steamer's mistake, "that the presence of a white "light *for a short period of time* on the forward part "of a sailing vessel, cannot be an unusual or extra- "ordinary circumstance."

If so, ought it not to require an increased vigilance on the part of an approaching vessel to distinguish between the two lights which can so easily be confounded? And especially does it not hold a steamer approaching such a light to a strict observance of Art. 16 of the Sailing Rules, in order that she may be certain that the light is only exhibited for a short period of time.

"Art. 16. Every steamship, when approaching "another ship, so as to involve risk of collision, "shall slacken her speed, or, if necessary, stop and "reverse."

If the vessels were approaching each other, as the District Court finds, a very slight porting of the Steamer's helm would have enabled them to pass each other. The Propeller was 156 feet long. A porting sufficient to clear 80 feet was all that was necessary. If the bow light of the Propeller was not unmistakable from a hand-lantern on her decks, at the distance required to make such porting effectual, the whole system of signal lights must be worse than useless. At such distance, the saloon lights of the Propeller ought to have been seen, and the noise of her engine and paddle, and progress through the water, might have been perceptible.

III. The character of the light was manifested to the Steamer, beyond any question, by its bearings.

Those bearings are given to us by the wheelsman, (p. 57,) as three points on the starboard bow when the light was first seen, and he says, they continued the same without alteration until the collision—or until it was too late to avoid the collision.

Now these bearings ought to have told those navigating the Steamer, that the vessel carrying those lights was directly approaching the Steamer. Otherwise they would have changed. No navigator fit to be trusted with a Long Island Sound Steamer could fail, by mere intuition, to know it.

But the wind, it is admitted, was N. N. E. The vessel, with the lights, therefore, was approaching *directly in the eye of the wind.* And yet the Captain of this Steamer swears that he supposed her to be a sailing vessel all the while, and the Court below tells us, that he was justified in that supposition.

Again: the wind being N. N. E., a sailing vessel, in order to show her green light to the Steamer, must have been on her starboard tack, and could not have lain closer to the wind on that tack than a N. W. course.

This course would have been nearly at right angles to the Steamer's course, and, if the vessel sailing it was first seen three points on the Steamer's starboard bow, every minute would carry her further out of the Steamer's way, and would of course change the bearings of her lights, and the relative distance between her lights.

This is illustrated by the appended Diagram, No. 1.

And the Steamer's case requires us to believe that her officers either did not know that this was what the bearings of the light indicated, and, indeed, de-

monstrated, or that they gave no attention to it, and that in either event no fault is to be imputed to them in respect of it—although, if they had only given the matter thought, the serious consequences that resulted from their failure to do so, would have been wholly avoided.

On the contrary, we insist, that it was negligence, and of the grossest character, that those officers should have allowed themselves to be misled into any notion that the Propeller's lights were of a sailing vessel, when it ought to have occurred to them, without hardly the necessity of thought, that a sailing vessel could not sail against the wind.

And so considered this Court in *The Gray Eagle*, where it was held to be negligence not to be able to determine the position of a vessel by the change of bearing of her light—although the light itself indicated that the vessel was not in motion.

IV. The orders which the Captain of the Steamer testifies he had given to his look-out, and upon which the look-out seems to have acted, on this occasion, shows him to have had a very confused notion of the object of the regulation lights, and indicates a habit of inattention to their particular significance.

"A look-out reports a steamer as a steamer, and "a vessel as a vessel; all he knows is by the lights; "at night he reports four lights as a steamer, and "two lights as a vessel. If the vessel seen has one "colored and only one bright light, he reports her as "a sail vessel. That's his orders." Capt. Bowns, (p. 63.)

It is, perhaps, not surprising that a look-out, receiving such orders, should report the Propeller as a sail, and is certainly not to be wondered at that the officer who could give them should adopt such a report as infallible, and shut his eyes and ears to any further evidence on the subject.

Captain Bowns, it is very clear, has been in considerable doubt as to what lights were really seen from his Steamer.

On the evening after the collision, he gave to a public journal, published in the community where such a disaster would naturally excite an interest in what the officers of the respective boats might say about it, his version of the affair.

It was for his own vindication, and must have been carefully made. The editor testifies that he took what he said down "sentence by sentence," (p. 66).

It was as follows :

"When we hauled our course around the shoal "ground, we made the Propeller, as it proved to be, "about two points off the starboard bow. The for- "ward deck watchman reported a sail off the star- "board bow. We judged her to be such from her "lights, which were red and green. No head or "stern lights were visible. We supposed she was "going to the northward of us, and we canted a lit- "tle to southward to let her pass," (p. 66).

He now denies what he is there reported to have said "about the green and red lights," but not what was said about the head and stern lights, and on recurring to the Answer in this case, the Court will see that what Captain Bowns then asserted, was at the filing of the answer adopted by the claimants as the ground-work of their defense.

The Answer denies that the Propeller had any white light at her bow, but admits that she had her colored lights at the sides.

Upon what information was this denial made and sworn to ?

Not a witness has appeared for the Steamer who has not conceded that the Propeller's white bow-light was burning well—and every officer of the steamer has appeared as a witness.

The claimants cannot escape from the alternative —either that the present theory of their defense has been adopted since their Answer, and the facts shaped to meet it—or that these officers of the Steamboat were really so heedless of the Propeller's lights, that they have at no time been certain as to what they did see.

V. And the same heedlessness is evidenced by the reasons that they offer to justify the assumption, that the white light must be the light of a sailing vessel.

Says Captain Bowns, of the Steamboat, (p. 61.) "Sometimes in a sailing vessel, they come forward "and stick out a white light when they get a little "frightened. Sometimes they have a light forward "to overhaul the anchor chain."

And, doubtless, sometimes sailing vessels, and steamers as well, use a lantern forward for many other purposes.

But what becomes of the system of signal lights, if a navigator is to be justified in assuming such lights to be signal lights, and *vice versa?*

If the fact is so, that they are so easily mistaken for each other, the necessity of precaution in approaching such a light, is correspondingly increased, and can hardly be limited.

Captain Bowns does not tell us to which of the instances he suggests he supposed the Propeller's light to belong—a light stuck outside of the sailing vessel, or a light used about her deck—but, in either case, the excuse is at the expense of his judgment.

What reason had he to suppose that the light was stuck out because the vessel was a little frightened? Certainly, when he first saw the light, there was nothing in the Steamer's position to frighten this vessel, which, he thinks, was four miles off—and

one theory of the defense, by the Answer, is that at no time, until the Propeller ported, were the vessels in any position to involve risk of collision.

Nor did he have any better reason for assuming that the vessel had a light forward to overhaul her anchor chain. She was not near any usual anchorage ground in New Haven harbor. If a sailing vessel, she would have been beating up to the harbor, against a wind blowing almost directly out of the harbor, and she had a great deal to do before even entering the long channel leading into the harbor.

SECOND. Even if the Steamer could be justified in mistaking the Propeller's lights for the lights of a sailing vessel, her conduct was no less faulty.

The bearings and appearance of the lights indicated to her Master, as we have seen, that the vessel, if a sailing vessel, was approaching by a line converging to the Steamer's course.

But if her Master is to be believed, it is very certain that he did not know, or seek to ascertain, the course the supposed sailing vessel was lying, and *yet he starboarded his helm so as to clear her.*

And from his not porting, instead of starboarding, the District Judge finds that the whole trouble has resulted. Indeed it is evident that a very slight porting of the Steamer's helm, a half minute before the collision, would have caused her to clear the Propeller.

Now the Steamer had no right to approach a sailing vessel, without slackening her speed, unless she was so certain of her position that there could be no room for doubt as to which side of her she could safely pass.

The duty was imperatively laid upon her of keeping out of the sailing vessel's way.

In *The Carroll*, 8 Wall. 302, this Court say by Mr. Justice Davis:

"The fact that the vessels did collide explodes the theory "that there was no risk of collision, and, besides, why did the "mate port his helm if, in his judgment, there was no risk of "it. He says this was done as soon as he saw the Schooner. "If so, he believed at the time the relations of the vessels to "each other were such that they might collide, and the possi- "bility of it, is all that is required to charge the Steamer un- "less she can establish that she was without fault. * * * *

"It is obvious that the officers of the Carroll were either "unaware of the nature and extent of the nautical rules which "govern vessels approaching each other in opposite directions, "or were unmindful of them. These rules were established in "the interest of commerce—for the protection of life and "property, and must be observed. They require, where a "steamship and sailing vessel are approaching from opposite "directions, or intersecting lines, that the steamship, from the "moment the sailing vessel is seen, shall watch, with the "highest diligence, her course and movements so as to be "able to adopt such timely measures of precaution as will "necessarily prevent the two boats coming in contact. This "the Carroll, on this occasion, failed to do. Porting the helm "a point, when the light of the Schooner was first observed, "and then waiting until the collision was imminent before "doing anything further, does not satisfy the requirements of "the law. The safeguard against danger, in order to be ef- "fectual must be seasonably employed, and in this case they "were not used until the danger was threatening If there "was fault on the part of the Schooner, the Steamer commit- "ted a far greater fault in suffering the vessel to get in such "dangerous proximity at the moment preceding the collision, "and, as she has furnished no excuse for this misconduct, is "chargeable with all the damages resulting from the collision.

In *The Alhambra*, 2 Ben. 163, says Judge Blatchford:

"The Steamer made the Schooner one and a half to two "points on her starboard bow, and, acting on the indications "that the approaching vessel was a sailing vessel, did not port "her helm but starboarded it, in order to keep out of the way of "the Schooner." "The approach of the Schooner, without "the bearing of her lights being substantially altered, while "the course of the Steamer was first S. S. E. for ten minutes, and "then S. for fifteen minutes, ought to have been a clear indi- "cation to the Steamer that the Schooner was proceeding in "such a direction as to involve a risk of collision. Under "these circumstances it was the duty of the Steamer to keep "out of the way of the Schooner." "It was wrong in the "Steamer to persist in starboarding her helm and running on "a course which, from the bearing of the Schooner's lights "and the freshness of the wind, it ought to have been evident, "would soon bring the two vessels into peril of collision. The "Steamer ought to have ported her helm before she did. If "she had done so, she would have cleared the Schooner, as "the movement which the Schooner made in the heat of "danger, in putting her helm hard to port, favored the chance "that the Steamer would, by porting, clear the Steamer." "Moreover the Steamer did not soon enough slacken her "speed, or soon enough stop and reverse. If she had done so "at an earlier moment she would have gone under the stern "of the Schooner, and so she would if she had ported at an "earlier moment."

In *The James Watt*, 2 W. Rob. 271, the Master of the Steamer testified that when he discovered the libellants' vessel he ported his helm without stopping to ascertain her course.

"In my apprehension," said the Judge, "the master of the "James Watt would have acted, under the circumstances, "with greater prudence and caution, if, upon first discovering "the sailing vessel, instead of porting his helm he had con- "tinued his course at slacked speed, by easing his engines, "till he was enabled to discover the course the sailing vessel "was steering, and then acting according to circumstances. "If he had pursued this course, it is apparent from the evi- "dence that in a short space of about a minute after the sail "was reported, he would have discovered her course and "could have adopted the measures that might altogether have "prevented the collision."

THIRD. The finding of the District Court, that "immediately after the Continental had come out "of the harbor, and hauled up, or nearly, on her "Sound course, the vessels were approaching each "other, nearly end on, so as to involve risk of col-"lision, and that the collision would have been "avoided by each porting its wheel," is clearly sustained by the proofs.

Of course, if the vessels were not so approaching each other, any question as to the Propeller's stern light becomes immaterial.

The Steamer could not have been *mis*-led into doing what she had a right, or it was her duty to do—and she clearly had the right to starboard, unless the approach of the vessels involved risk of collision.

In fact, the two defenses are radically inconsistent with each other. But the decision of the Circuit Court is rested upon both.

The answer was carefully framed to meet either alternative.

I. It would seem that it could not be otherwise than that the vessels were approaching upon converging lines, from the courses which they must of necessity take.

One was bound from New Haven to New York, and the other from New York to New Haven.

One with the New Haven light a stern, was heading for Stratford Light, (only 10 or 12 miles distant,) and the other with the Stratford Light a stern, was heading for New Haven Light.

One had just left the narrow channel of New Haven harbor, on her course to New York, and the other was about entering that channel, on her course from New York.

II. That the Captain of the Steamboat regarded the Propeller as approaching in the general line of his course is manifest.

In his published statement he says, that he judged her to be a sail vessel, from her lights, which were red and green—that no head or stern lights were visible, and that he supposed she was going to the northward of us, and *we canted a little to the southward to let her pass.*

Why did he cant to the southward *to let her pass*, if she was not coming on the line of his course?

There was no pretence, then, that the course of the vessels were at any time diverging or parallel —with a distance of three points between them.

But the justification of the Steamer was rested solely upon the claim, that neither of the white lights of the Propeller could be seen, and that, therefore, she was mistaken for a sailing vessel, with her red and green lights; and the Steamer was misled into canting to the southward, instead of porting and going to the northward, as she otherwise would have done, in order to let the vessel pass.

The testimony of Captain Bowns shows the same thing.

He says, that when he saw the Propeller's lights, he did not let the Steamer come up to within a point and a quarter of her Sound course, and then starboarded and kept her off so as to clear the vessel, (p. 63.)

Why was this done if he did not know that the vessel was coming in a converging course, and that there was *risk* of collision if he kept the course he intended to take before seeing her lights.

III. But the fact is demonstrated by the fact of the collision.

The claimants say that the *red* light of the Propeller was not seen by the Steamer until it was too late for the Steamer to do anything to avoid the collision, and, therefore, they say the Propeller was not approaching so as to involve risk of collision, but was attempting to cross the Steamer's bows.

And they admit that when they in fact saw the Propeller's red light, they knew she was a Steamer, because she blew her whistle at the same time.

Now it is utterly impossible that the collision could have occurred, under any circumstances even suggested by the case, without the red light of the Propeller being exposed to the Steamer in ample time to avoid the collision.

Especially under the circumstances sworn to by the officers of the Steamer was this the case.

These officers testify that when they discovered the Propeller's lights they were about three points off the Steamer's starboard bow—the Captain says four miles off, (p. 65,) the wheelsman, one to one and a half, (p. 57,)—and they so continued to bear until the Propeller ported to cross the Steamer's bow.

They also swear that the Steamer kept the course she took on discovering the light (that is S. W. by S.,) until the collision.

Now if it is true that the bearing of the Propeller's lights did not change, materially, from the time they were discovered, until the instant before the collision,

it is a demonstration that the Propeller's line of motion, was *converging* to the Steamer's line of motion, and it is impossible that that could have been without uncovering her red light before she had come within at least three-quarters of a mile of the Steamer.

If, on the other hand, it be said that the testimony respecting the bearings cannot be relied on, and it is assumed that the Propeller's course was not so converging as to uncover her red light until the Propeller ported, then it is equally clear that, if the Propeller turned, from any point in that course, when her red light was not visible, to cross the Steamer's line of motion, she would have been compelled to show her red light for the whole distance between the two respective courses, and it must be conceded, would have given the Steamer ample time to clear her.

This is illustrated by Diagram No. 2. The Steamer is on her S. W. by S. course. The Propeller is discovered three points on her starboard bow, two miles off, and so heading that only her white and green lights shall be visible.

If the Steamer keeps her course, it is not possible to give the Propeller any course which shall bring her into collision without uncovering her red light in ample time for the Steamer to avoid her.

There is no question here of distances or bearings. The Propeller cannot be placed on the starboard bow of the Steamer, (going the course which is claimed for her,) at any distance or bearing whatever, and come into collision with her without disclosing her red light, in abundant time for he Steamer to clear her.

And yet the Captain and wheelsman of the Steamer, and every other witness to the collision for the claimants, have sworn that the position of the vessels was as here indicated, and that they did not see the Propeller's red light until almost the instant of collision.

How, in view of this, are they to be relieved from the suspicion that their story has been made up to meet the libellant's case in Court, and that the truth, as to the way the vessels approached each other was more nearly indicated by the Captain of the Steamer in his newspaper statement, before it was ascertained that the Propeller's *head* light could not be got out of the way, namely, that the Propeller came toward the Steamer with only her green and red lights visible, and therefore under circumstances involving risk of collision, and that the Steamer was canted to the southward, that is, her wheel was starboarded, in order to let the Propeller pass.— His further saying that he supposed her to be a sail vessel, because she carried *no* white light whatever, carries with it an admission that his starboarding would have been faulty if he had supposed her to be a steam vessel.

The learned Judge, giving the opinion of the Circuit Court, after placing the Propeller on the starboard bow of the Steamer, says, "in that relative "situation the vessels could not collide, *if each kept* "*her course.*"

But *what* course is supposed for the Propeller? A course, in which she should not uncover her red light? In that case it is very certain that the vessels could not collide.

But the difficulty is, *there was a collision.* The course, therefore, which the Propeller was actually on must have been one in which her red light was at some time in it uncovered to the Steamer; and when it was uncovered, there was "risk of collision."

Now if that course of the Propeller, up to the time when the red light came into the Steamer's view, was on a line *converging* to the Steamer's course, then the light must surely have appeared before the Propeller was within three-quarters of a mile of the Steamer.

If, on the other hand, it was not in a converging line, then we have got to suppose that the Propeller

turned from that course to perform the objectless and absurd maneuver, of crossing the Steamer's bow, and must admit that, in doing so, she would have to expose her red light for even a longer period of time than if her original course had been a converging one, and would have been all the time on the Steamer's starboard bow, with the obligation on the Steamer to keep out of her way. But the maneuver to be supposed is an impracticable one, as a glance at the diagram will show.

IV. On the other hand, the account of the manner in which the vessels approached, as given in the libel, and supported by the testimony of the officers of the Propeller, is consistent with every acknowledged fact and entirely reasonable in itself.

And, doubtless, because of its intrinsic strength, as well as the unreliability of the claimants' proof, it was adopted by the District Judge as the true history of the way the vessels were brought together.

It is the simple case of two vessels approaching each other, in such manner as to involve risk of collision, and this made apparent to both by the color of their respective lights.

If the Steamer had done as the Propeller did—ported its wheel—they could not have come together.

FOURTH The libellants have presented the case upon the facts found by the District Court, but denying the inference which that Court drew from those facts, that the mistake of the Steamer was a reasonable mistake.

They, however, go further.

While they conceive that the facts so emphatically found by the District Court justly lead to the stultification of those in charge of the Steamer, and necessarily to the condemnation of the Steamer, for the heedlessness which is involved in such stultification, they still insist that it is upon the other horn of the dilemma that the claimants should be held.

They deny that the Steamer was in fact misled by the Propeller.

The officers of the Steamer had not navigated Long Island Sound so long as they say, without possessing the intelligence necessary to inform them that the vessel they were approaching was not only a steam vessel, but this very Propeller Northampton, which they were accustomed to meet every night.

If her stern light was not visible, every other light confessedly was—and they must have known well enough, by their own long experience, that the absence of a single light, temporarily, is a casualty that may happen to any vessel. If the lights had appeared to them at all uncertain—if indeed, it had not been known to what vessel they, in fact, belonged—the Steamer would have been held in check, and not allowed to go on at a speed which, otherwise, would have been reckless.

But it was because these lights were known to be the lights of this Propeller—and she a boat of a rival line—that the stubborn determination was manifested not to give up to it the outside course—and hence the disaster.

C. DONOHUE,
J. S. BEACH,
C. R. INGERSOLL,
Counsel.



Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

THE STEAMBOAT CONTINENTAL, THE NEW HAVEN STEAMBOAT COMPANY,
Claimant and Appellee,

ads.

THE NEW HAVEN STEAM TRANSPORTATION COMPANY,
Libellant and Appellant.

Brief and Points of Appellees.

This is an appeal by the New Haven Steam Transportation Company from a decree of the Circuit Court for the district of Connecticut, affirming the decree of the District Court, whereby the libel was dismissed with costs.

The libel is in *rem*. The action was brought to recover damages arising from a collision which occurred between the appellant's propeller *Northampton* and the appellee's steamboat *Continental*, near the entrance of the harbor at New Haven, a little after one o'clock on the morning of the 23d October, 1868, whereby the *Northampton* was sunk.

The *Northampton* was at the time proceeding upon one of her regular trips from New York to New Haven with freight and passengers, running at the rate of about nine miles an hour, and the *Continental* was on one of her regular trips from New Haven to New York with freight and passengers, and running at the rate of about twelve miles an hour.

The night was dark with a drizzling rain at the time so that it was difficult to judge of distance, but signal lights could be seen without difficulty. The tide was flood, which made a current to the westward.

The *Continental* had all her lights properly set and the same were burning brightly; she had a competent and vigilant look-out, and was under the command of a skillful pilot.

The *Northampton* had no look-out, nor had she any stern-light. Before and at the time she sounded her whistle she was heading E. N. E., directly for the New Haven light, and in undertaking to cross the bows of the *Continental* she was struck on her port side, a little abaft midship, a blow nearly square on, angling a little aft, and sunk in less than half an hour. The question is which vessel was in fault.

The District Court decided that "the *Northampton* "was in fault in having no stern-light. She was run- "ning in direct violation of law, which required her to "have a central range of two white lights," that that was the cause of the collision, and the libel was accordingly dismissed with costs. (*See opinion, fols.* 67–72.)

Upon appeal, the Circuit Court affirmed the decree of the District Court. In his opinion Judge Woodruff says he concurred "fully in the conclusion of the Judge of the District Court in respect to the fault of the libellant's vessel, the propeller *Northampton*, and her responsibility for the collision." (*See Opinion hereto annexed.*)

POINTS.

First.—The courses and positions of the respective vessels, before and at the time of the collision, are undisputed. The *Northampton* was heading *E. N. E.*, and directly for the New Haven light, before and when she ported her helm, just before the collision, so that her place is mathematically certain. She must have been at that time directly *W. S. W.* from that light.

The *Continental* was at the same time heading *S. W. by S.*, outside of Stratford light, therefore, if both vessels had kept along on their respective courses they would have passed on the starboard hand at a safe distance.

The *Continental* did keep her course; the *Northampton* did not, but ported her helm, and ran directly and suddenly across the bows at nearly a right angle. These general facts are clearly established by the testimony.

Second.—The appellees insist that the *Northampton* was in fault, and that it was through her negligence that the collision occurred, and, therefore, there is no error in the decree of the Circuit Court.

I.—She was running in open violation of the well settled rules of navigation adopted for the purpose of preventing collisions, in that she had no "after-light," and, therefore, did not have a "central range of two white lights," as the statute required (14 *Stat.*, 268, *Sec.* 11; 13 *Stat.* 59, *Art.* 3.)

(1.) The testimony clearly establishes the fact that she was then and there, and had been for some time, running without such after-light.

Wilcer C. Post says (*fols.* 42, 43), that while in the pilot house, he saw the *Continental* coming down the harbor bear-

ing from 2 to 2½ points off his port bow; that seeing the stern-light "burning dim," he went aft and lowered it down, took it forward into the passage-way, on the starboard side, and picked it up, and then took it aft, and was in the act of hoisting it when he heard the whistle of the *Continental*, which was only a moment before the collision.

David G. Horton, a Hell Gate pilot, who was a passenger on board the *Continental*, says (*fol.* 51), that *after* the collision, he saw the "stern-light about half way up the flagstaff," and at *fol.* 50 he says he saw the *Northampton* before the collision, and saw "no aft-light."

John G. Bowns says (*fol.* 61), "she had no stern-light."

(2.) How long this after-light had burned dim does not appear, nor does it appear how far it could have been seen in that state before it was taken down; but it is clear, from the testimony, that it had been a poor, defective light for some time previous to its being taken down, and that it must have been down for a considerable time before the *Northampton* blew her whistle (*fols.* 61, 62, 50, 51.)

(3.) The central range of white lights was required by the amendment of the law to indicate (and which cannot be done in any other way in narrow work) the true course and direction of the approaching steamer. It applies to all vessels under steam except "ocean bound steamers." (*Compare Act of* 1864 *with the Amendment of* 1866 *above cited.*) With nothing but the colored lights, steamers may be approaching nearly end on, and so as to involve the risk of collision, when one of them is not visible. The colored lights are to be so constructed as to shine from a point right ahead to two points abaft the beam, so that a steamer approaching another on nearly a parallel course, a very little of either hand, would only see one colored light, and could not

thereby determine how near the two were approaching "end on." The bow-light alone would not enable the approaching steamer to determine this fact without the aid of the after-light, giving thereby a "central range of two white lights." If approaching directly end on, the two white lights will be in range, and if not, they will be "open." Thus if the vessel approaching is on the starboard hand, as was the *Northampton*, her stern-light would appear from the *Continental* open to the left or port of her forward light, and it would be open more or less, according to the divergence of the lines upon which the two were then running.

(4.) It is no excuse for the *Northampton* that her stern-light, having become dim, had been temporarily removed for the purpose of being trimmed. (*Rogers* vs. *St. Charles*, 19 *How.*, 108; *Chamberlain* vs. *Ward*, 21 *How.*, 548.)

II.—The absence of such necessary range of lights could not fail to deceive, and did in fact deceive and mislead those in charge of and navigating the *Continental*, in that they took the *Northampton* to be a sailing vessel, which they might pass on either side as they pleased—the law merely requiring them to keep out of the way of a sailing vessel.

(1.) The testimony shows, and the fact is not contradicted, that the *Northampton* was supposed, and taken to be, a sailing vessel; that she was reported as such, and that the movements made on the part of the *Continental* were based upon that idea (*fols.* 52, 63).

William S. Grant, who was look-out on the *Continental*, and stood within about eight feet of the stem, (*fols.* 52, 53), says he reported the *Northampton* "sail off starboard bow," and received an answer, "aye, aye."

Captain Bowns says (*fol.* 62), when so reported he supposed she was "a sailing vessel, because she had no proper light for a steamer;" that he was then haul-

ing up on his Sound course, and he "told the wheelsman to steady her, and not let her come up any more on her course" (*fol.* 63.) * * Then told him to steady, and then "to keep to the southward a little;" all of which orders and movements were entirely proper if the *Northampton* had been, in fact, what she was taken to be—a sailing vessel.

Horton, the Hell Gate pilot, andpassenger above mentioned, says, (*fol.* 50) he had been in the pilot-house of the *Continental*, and on coming out of it he saw a green and white light—no other; white light forward; saw no aft-light or red light; and that "she seemed to be a sailing vessel."

(2.) It is no answer for the appellants to say that those in charge of and navigating the *Continental*, upon reflection, might have known that the *Northampton* could not have been a sailing vessel, because a sailing vessel does not carry a white light forward, and because, with that wind, a sailing vessel could not have been heading as she was.

(*a.*) Although sailing vessels are not permitted by law to carry a white light, yet it was proved without contradiction to be not unusual in the night, when making preparations for landing, to have a light on the forward deck in getting her lines and chains readily (*fols.* 50, 61).

(*b.*) As she did not have the lights which steamers are required to carry, they were not bound to presume, from the mere fact that a white light was seen at her bow, that she was a steamer. There is no evidence that "ocean bound steamers," which carry a white light forward, ever frequent the waters wherein these vessels were, nor that they are ever seen navigating any part of the Sound. Moreover, the white light which ocean-bound steamers are required to carry, is

carried at the fore-masthead, above, and not below, the colored lights, nor near the deck, at the stem.

(3.) Having led the *Continental* into danger by such false and defective lights, the appellants cannot properly require extraordinary vigilance on her part, nor insist that by reflection and by more than usual vigilance it might have been ascertained that the approaching vessel was a steamer in time to have avoided the collision. Those in charge of the *Continental* exercised proper and reasonable vigilance, and having nevertheless been misled, they are not responsible if, under circumstances apt to create a doubt, their judgment was in fact deceived. "It is precisely such errors that the law was designed to guard against, and precisely such errors the neglect of its observance is likely to produce." (*Opinion Judge Woodruff herein.*)

III. The *Northampton* was also in fault in not having a look-out. The fact that she had none is proved and is not contradicted. (*See Test. of Post, fol.* 42–44.)

(1.) This was gross negligence. She was bound by law to have one. It was necessary for her guidance. The master and pilot had other duties to perform, which rendered them incompetent. (*The Ottawa*, 3 *Wall. R.*, 268.) The fact that the *Continental* was seen by the master and pilot does not obviate the objection. The inference is strong, that if she had had a vigilant lookout, the lights of the *Continental*, and her direction would have been more carefully reported, and the collision might have been avoided. A vigilant look-out in the night in a thoroughfare, is an absolute and inflexible necessity. No one can tell what might have been the effect of having a vigilant look-out forward.

(2.) The failure to comply with these requirements is *prima facie* evidence that the collision was caused thereby, and casts upon the libellants the burden of proving affirmatively that it was not, which they have failed to prove. (1 *Pars. Mar. Law*, 191, Cases cited in Note 4.)

Third.—The *Northampton* was clearly in fault for sounding one blast of her whistle, and in attempting to cross over and pass the *Continental* on her left or port side—thus throwing herself right across the bows of the *Continental.*

(1.) The testimony establishes the fact that before the *Northampton* so sounded her whistle and ported her helm, the *Continental* had passed her line of direction, from port to starboard, and was, in fact, on her starboard side. She was seen by those on the *Continental* off their starboard bow, and they saw her green and not her red lights.

(*a.*) At the time the *Northampton* so ported her helm she was heading *E.N.E.*, and directly for New Haven Light; she must therefore have been on a line directly *W.S.W.* from that Light, and in shore, or to the westward of the line between New Haven Light and Stratford Light. The collision occurred to the southward and eastward of the line on which the *Northampton* had been running, and between West Haven and New Haven Light. According to the testimony of the witnesses on the part of the *Northampton*, the *Continental* was "nearly ahead" a little on the port bow, and from one-half to three-quarters of a mile off, when the *Northampton* blew her whistle. Now the *Continental* must have been seen by those on the *Northampton*, off their port bow, as she came along down the harbor, and until she had passed the Light House, and so their line of direction ... but after that she would be more or less on their star- ... board bow.

(*b.*) The appellant's witnesses were in error in sta... that the *Continental* began to haul up on the Sailing course *before* she reached and had passed the Sound New Haven Light. The weight of testimony clearly e... lishes the fact that she had passed such Light and the line of direction of the *Northampton* before she began to haul up on her Sound course, and before the whistle was blown from the *Northampton.* ...e any

Grant, the look-out, says (*fol.* 53), the *Continental* had passed the New Haven Light before he reported the *Northampton*, so far that it had gone out of his sight.

Mills, the wheelsman, says (*fol.* 56) the usual course is to run down past the New Haven Light until they get it four or five points abaft the beam, when they begin to haul up, and that they ran out that night a little further than usual.

Captain Bowns says he ran out on a *S. S W.* course nine minutes after passing Pardee's Buoy. That New Haven Light bore *E. N. E.* when they had run five minutes, so that, according to his testimony, they ran four minutes after they had passed the line of direction of the *Northampton* before hauling up. But whether she did so or not, it is quite certain that she had passed the New Haven Light, and must therefore have been outside and to the starboard of the *Northampton* when she commenced to haul up.

That she was so, appears also from the fact that the claimants' witnesses saw the *Northampton's* green light, and not her red light. This fact is testified to by five witnesses, viz., Grant, Mills, Starr, Bowns and Horton (*fols.* 50, 53, 54, 58, 61).

That she was so on the starboard side appears also from the testimony that the *Northampton's* green light bore to starboard of the Stratford Light. The Sound course of the *Continental* was *S. W.* $\frac{3}{4}$ *W.* to Stratford, being about one and a quarter points to the southward of the *Northampton's* course, and they had not come fully up to the course for Stratford Light (*fol.* 55).

The answer was referred to as admitting that they had got upon the Sound course, but that is not so, there is no material conflict between the answer and the testimony.

Although it does not appear with certainty how far the *Continental's* line of direction was to the southward and eastward of the *Northampton*, yet the testimony justifies the inference that if they had kept on they would have passed each other in safety. The lines of their direction were not *converging*, but *diverging*. How much they diverged could not be determined by those on the *Continental* for the want of the "central range of white lights." Nor does it appear with certainty how far they were apart when the *Northampton* sounded her whistle and ported her wheel. It is evident, however, that they were dangerously near, for the collision occurred in a very short time thereafter—almost immediately.

(2.) Taking the relative bearing and position of these vessels, it is insisted that the *Northampton* had no right to port her wheel and attempt to pass on the port side of the *Continental* when there was not sufficient time to avoid her. The witnesses say that the *Northampton's* wheel was ported on sounding her whistle, and immediately afterwards it was put hard to port, and although Capt. Stannard could not say how much she fell off, yet she must have changed several points. It only required her to swing off about three points to have brought her across the *Continental's* bows, as she was when struck.

Fourth.—The *Continental* was properly navigated and was not in any respect in fault.

I. She was pursuing her lawful and proper course on her voyage. She had all the lights required by law properly set and burning brightly. She had a compe-

tent look-out properly stationed and faithfully attending to his duty. She had a competent engineer at his post who answered all the orders from the pilot house promptly, and she was running at a reasonable speed.

II. The faults alleged against her are, that she should have passed to the right; that she should have ported her wheel upon hearing the whistle, or if that was not practicable she should have signalized a different intention; that if at the time she gave her two blasts she had ported her wheel it was practicable to have passed on that side. (*Fol.* 7, *Art.* 5.) Neither of those allegations has been established by the evidence.

(1.) It was not her duty to have passed to the right of the *Northampton*. Having been misled by her lights and taking her to be a sailing vessel, the *Continental* might have passed on either side as she pleased, the statutory rules of navigation only required her to keep out of the way of sailing vessels, without prescribing what she should do to accomplish that.

(2.) She was in fact on the starboard side of the *Northampton*, and running on a diverging line, was not bound to pass to the right. The law only required her to do so in case she had been approaching "end on or nearly so," and so as to involve a risk of collision. Seeing nothing but the green light, those navigating the *Continental* might have reasonably supposed there was no risk of collision if the *Northampton* kept along on her course and the event shows that if she had done so, the vessels would have passed in safety on the starboard hand of each other.

(3.) The *Continental* was under no obligation to sound her whistle until after the *Northampton* by her whistle, disclosed the fact that she was a steamer. Before that, supposing her to be a sailing vessel, no whistle was required; nor was she bound to respond with one blast

and port her wheel. She had a right to judge whether, in the relative position in which the vessels were, she could safely pass to the right, and concluding she could not, she did what the libellants say she should have done, *i. e.*, she promptly dissented by giving two blasts of her whistle. There was no delay in answering her signal whistle.

(*a.*) The witnesses on the part of the libellants who pretend that there was delay in answering the same, are:

Captain Stannard, who says it was nearly a minute before the response (*fol.* 36.)

Mellon, the pilot, who says: "it might have been half a minute, more or less; I cannot tell when she blew her two whistles" (*fol.* 40.)

Post says he heard the *Northampton's* whistle and that "after an *interval* there was a reply of two whistles from the *Continental*" (*fol.* 43.)

Coombs says: "in an interval of $\frac{1}{2}$ or $\frac{3}{4}$ of a minute heard the *Continental* blow two whistles (*fol.* 47.)

Adams and Lewis did not hear any whistle from the *Continental* (*fol.* 48, 49.)

(*b.*) Against these there are five witnesses, who say that the response was promptly given.

Mills, the wheelsman on the *Continental*, says: "We responded, and wrung four bells promptly" (*fol.* 55.)

Capt. Bowns says: "She blew one whistle. * * * I blew two whistles and stopped the boat * * * I sounded my whistles at once, as soon as hers had done" (*fol.* 62)

Smith says he "heard one whistle and the two *right in succession*" (*fol.* 60.)

Starr says he "heard one, and immediately heard the two whistles" (*fol.* 58.)

Grant, who was on the lookout, says: "He heard one blast, and immediately after heard two blasts." (*fol.* 53.)

The weight of testimony therefore clearly shows that the *Continental* did respond promptly.

(4.) It is said that if the *Continental* had ported her helm when she gave the two blasts of the whistle, it was practicable to have passed on the right, but the testimony does not warrant any such inference.

(*a.*) It is clear from all the testimony that when the *Northampton* sounded her whistle she was in dangerous proximity to the *Continental*, and that such movement could not then have been successful.

Grant, the look-out on the *Continental*, says he "heard one blast, and immediately after two blasts, just before the collision, all in a heap. It was all at once as near as could be" (*fol.* 53.)

Starr says: "that from the time the *Northampton* blew her whistle to the collision was from ¼ to ½ minute. (*fol.* 58.)

Smith says that from the first whistle to the collision was perhaps ½ minute" (*fol.* 60.)

Capt. Bowns says: "it was from ¼ to ½ minute from the *Northampton's* whistle to the collision" (*fol.* 62, 3.)

Capt. Stannard says: "that when the *Continental* blew her two whistles she was possibly 250 yards from the *Northampton*" (*fol.* 38.)

Mellon, the pilot, thinks "that she was then about two lengths off, as near as he could judge"(*fol.* 41.)

(*b.*) But seeing that the *Northampton* pertinaciously insisted upon crossing and passing to the right, the master took hold and helped heave the wheel to port, to give all possible chances (*fol.* 63), and the wheelsman says, that "when the vessels came together he had the wheel five or six spokes to port (*fol.* 55).

(5.) There is no allegation of fault in not stopping and backing. The testimony, however, shows that the engines were promptly stopped and reversed.

Capt. Bowns says he sounded the whistles and stopped the boat, rung four bells (*fol.* 62).

The engineer says that orders to stop and back all came together, and that he got her back three-fourths of a turn (*fols.* 58, 59).

Fifth.—But even if the *Continental* was in fault for not promptly responding with one blast instead of two, and for not putting her wheel to port, yet she is not responsible for any consequences arising therefrom, because, by the neglect of the *Northampton* to carry proper lights, she had been brought into great peril and danger (without any previous fault on her part), where a collision appeared to be inevitable, and therefore, upon well settled principles, she is not responsible for errors in navigation "committed in a moment of alarm, peril and pressing exigency." (*The Pacific*, 21 *How.*, 372; *Bently* vs. *Coyne*, 4 *Wall*, 509, 512.)

Sixth.—It is respectfully insisted, therefore, that in any proper view of this case, the decree of the Circuit Court was right, and should be affirmed, with costs.

E. H. Owen,
T. C. Doolittle,
Advocates.

OPINION.

WOODRUFF, Circuit J.

1. I concur fully in the conclusion of the Judge of the District Court, in respect to the fault of the libellants' vessel, the propeller *Northampton*, and her responsibility for the collision which gave rise to this action.

The proof clearly shows that she was, before and at the time of the collision, without the proper stern-light. At what precise time it became dim is not proved, and notwithstanding it was the duty of those in charge thereof to see that it was up and burning brightly, it may, for ought that appears in their testimony, for some time before it was taken down, have been in such condition as to wholly fail to answer the requirements of the act of Congress. When they came within sight of the *Continental*, and were thereby aroused to diligence, they discovered its condition; but too late to supply the defect in season to inform the *Continental* of her true character, and in consequence of this, followed as it was by taking down the light for the purpose of trimming, those on board the latter saw only the colored light, and the white light forward on her stem, and they were thereby, as a matter of fact, mislead into the belief that the propeller was a sailing vessel.

Waiving for the present the inquiry, whether careful and critical observation of the relative bearings of the two as they approached each other would have enabled the officers of the *Continental* to discover their mistake sooner than they did, the fact is fully established that the condition of the light did mislead them. Their testimony is explicit on the point, and it is not incredible; on the contrary such an exhibition of lights was well calculated to mislead. Although a sailing vessel is not

permitted by law to carry a white light, yet it was proved, without contradiction, to be not unusual for a vessel when near her destination in the night, and in making preparations for landing, to have use for a light on her forward deck, getting her lines or anchors ready, &c.

And to the suggestion that ocean-bound steamers are required to carry two colored and one white light, and, therefore, the presumption was, that she was a steamer, and the officers of the *Continental* should have so assumed, and that on this ground, taking her for a sailing vessel was of itself a proof of negligence or want of skill, the answer is, first, there was no proof that in fact ocean-bound steamers were ever seen navigating the Sound at all, still less in that neighborhood, and if it be, nevertheless, true, and so notorious, that the Court could take notice thereof; then, second, the white light which ocean-bound steamers carry, is at the fore-mast head, far above and not below the colored lights, nor near the deck on the stem. The arguments of the appellant assumed that the officers of the *Continental* might reasonably have expected to see ocean-bound steamers in the Sound, but the act requiring range lights applies to all coast-wise steamers, although they may navigate the ocean on their coast-wise voyages. I am not able to say that steamers crossing the ocean are in the habit of passing the neighborhood of the place of this collision. In any view of that question, their light at the foremast head could not readily be mistaken for the bow-light of a coasting vessel.

The propeller was therefore in fault. She was running in violation of the Act of Congress; that neglect of compliance with the law in fact misled the officers of the *Continental*. The look-out on the latter took her for a sailing vessel, and so reported her. The captain and the man at the wheel both swear that they took her for a sailing vessel, and acted upon that belief.

A Hell Gate pilot, a passenger on board, having no responsibility touching the management of the *Continental*, and apparently an indifferent witness, confirms them; he also took the propeller to be a sailing vessel.

It is suggested that in a case in the Southern District of New York, the officers of the steamship *Scotia* were held justified in mistaking a sailing vessel (the *Berkshire*) for a steamer, because she had a white light, and that if a white light on a sailing vessel could be deemed to indicate that the vessel bearing it was a steamer, a white light on a steamer cannot also be held to indicate that the steamer is a sailing vessel. In the first place, the only light seen on the *Berkshire* was a white light, and it was not deemed a fault that the officers of the *Scotia* believed that such white light was the mast-head light of a steamer at a distance just rising above the horizon, her colored lights not yet showing above the surface of the distant waters.

The cases are very unlike in this respect. In the next place, the vessel which is in fault in not complying with the statute regulation takes the hazard of such mistakes as may in the exercise of due diligence, care, and skill, be made by those who observe her. Approaching vessels have a right to expect compliance with the law, and exercise their judgment accordingly. And even if the same circumstances should operate to lead in one instance to the erroneous belief that the faulty vessel is a steamer, and in another instance to an erroneus belief that the faulty vessel is a sailing vessel, it by no means follows that one or the other of the deceived parties is in fault. If they actually exercise proper vigilance and skill, and yet are in fact misled, they are not responsible that under circumstances apt to create doubt, their judgment was in fact deceived. It is precisely such errors that the law was designed to guard against, and precisely such errors the neglect of its observances is likely to produce. I therefore, while I think that the *Continental* is, upon other grounds, exonerated from fault, concur in the conclusion below, that the propeller was in gross fault, and that such fault in fact misled the other vessel, and so far as that mistake was the cause of the collision, the responsibility rests on the propeller.

2. There is a further view of the subject urgently pressed upon my attention by the counsel for the appellants, and founded in part upon the testimony of the witnesses from the *Continental*. It is to the effect following, viz.: That the position and course of the propeller, seen to be approaching the *Continental*, considered in connection with the course of the latter, and the observations in fact made upon the latter are so inconsistent with the idea that the propeller was a sailing vessel, that the latter could not be true, and the officers of the *Continental* could not, without negligence or want of skill, believe it true. And that if, at the first observation, they were deceived, the changes presented to their eyes almost immediately should have undeceived them. That even the fault of the propeller did not excuse them from the exercise of ordinary care and skill.

The legal principle involved in this argument is correct, but when a vessel already in fault invokes its application, the burthen is upon her of showing very clearly that the party misled thereby might nevertheless by ordinary care and skill have avoided the collision or corrected the misapprehension.

The faulty party can not, for his own protection, demand of the other extraordinary diligence and skill; all he can require is ordinary care under the actual circumstances of mistake caused by his own fault. The claim of the appellants on this point is this: that when the officers of the *Continental* took the propeller to be a sailing vessel, they were bound to know and must be assumed to know all the conditions involved in that supposition, thus: the wind was, (as is expressly admitted) north northeast, This they knew, or were negligent in not knowing it. If the vessel seen was a sailing vessel, they knew that if she was on her port tack she could not be sailing nearer to the wind than due east, *i. e.*, (within six points) and if on her starboard tack she could not be sailing nearer to the wind than north-west. But they testify that her green light was visible. If that be

true then they certainly knew that she was not on her port tack, for on that tack they could not see her green light from the position in which they then were, but the red light on her port side, which alone could be visible.

They therefore knew (assuming that their testimony is true) that if a sailing vessel, she was not sailing in a direction approaching them, but going from them. Not only so, but assigning to the *Continental* a place, according to the testimony of her officers, viz., four-fifths of a mile southwardly of New Haven Light the green light of a sailing vessel, seen (as they say) two points on her starboard bow, even if sailing close-hauled on the wind, (*i. e.*, northwest), would barely be visible; and if she was three points on the starboard bow (as they say she was a very few minutes later), her green light could not be seen at all. Her backboard would have entirely cut it off. So that if in this position they saw the green light at all, and were running twelve miles an hour, it must have almost immediately disappeared, opening until disappearance on the *Continental's* starboard bow. All this, as nautical men of ordinary skill, they knew, and upon the premises assumed, it is obvious to any experienced mariner.

This being so, it was demonstrated to them by what (according to their own testimony) they saw, that she was not a sailing vessel, because she continued to bear in nearly the same direction, her green light being continuously visible, which could not be if she was a sailing vessel; and this they were bound to know.

When they first saw her the captain of the *Continental* says she might have been three or four miles off—he should judge four miles—and bore three points on his starboard bow. Elsewhere he says two and a half points, and makes the time when she was reported five minutes before the collision, which would make her true distance about one and one-half miles. Her other witnesses place the propeller from two to two and one-half points on the starboard bow; distant from one and one-half to two miles. Taking either of these estimates,

and considering the speed of the *Continental*, one minute could not elapse before the green light must be hidden from view, if she was a sailing vessel; and there was an abundance of time, if they had shown ordinary care and attention to the steady moving of the green light, to see that it was a steamer and not a sailing vessel. And further, if a sailing vessel, showing her green light two and one-half or three points on the *Continental's* starboard bow, the latter moving twelve miles an hour on her then course, southwest one-half south, her bearing would have changed with great rapidity more and more to starboard; and the fact that she did not at any time bear more than three points on that bow, was conclusive that they were mistaken. They should have known this, and they might and ought to have seen it while there was yet time enough to act accordingly.

This reasoning has much force if the positions of the vessels and the opinions of the officers of the *Continental* are assumed to be mathematically accurate.

But in relation to estimates of distance and observations of the precise angle made by another vessel, measured on a ship's bow, as well as slight fluctuations in course made in the night, it is of common experience that witnesses with the same opportunity for judgment differ, and some must, of course, be inaccurate. Close geometrical calculations are not reliable unless the premises are in harmony with other facts which are deemed established. And in regard to the claim that the *Continental* had opportunity to discover her mistake in supposing the propeller to be a sailing vessel, while it is true upon the premises that such discovery might possibly be made, if these premises are varied no such result ensues, and in any event it called upon the officers, after being deceived and misled, without fault, to enter upon a careful scrutiny, when wholly unaware of its necessity, and make their correction and act upon it within a very short time. Nevertheless, the considerations thus urged have led me to scrutinize the evidence of facts not lying in mere estimates by which to test the management of both vessels, and in my judgment there

are facts established by a clear preponderance of evidence which convict the propeller of fault and acquit the officers of the *Continental*, even if it were conceded that the latter ought to have known that the former was a steamer. They are these :

1st. When the officers of the *Continental* saw the propeller, they saw her off their own starboard bow.

2d. They also saw her green light, and not her red light, until she ported and turned across their course. From these two facts, it is a necessary and inevitable result that the officers of the *Continental* had no reason to apprehend a collision, and their sheer to the southward, out of abundant caution, or, as her witnesses express it, "to give the propeller a wide berth," was taking more than ordinary care to be wholly out of the reach of danger.

These two facts being established, there could be no collision, if both vessels kept their course, and the result is that the accident was wholly caused by the sudden and unwarranted porting of the propeller, which brought her across the bow of the *Continental*. I am aware that there is some conflict in regard to the facts above stated. The captain and pilot of the propeller testify that they were heading E. N. E. for New Haven Light, and that the *Continental*, when she sheered to the westward to take her course towards New York was seen on the propeller's port bow, and, in substance, that she so continued down to the moment when the propeller ported to pass her further to the right or port side, to port side. It is not necessary to question their sincerity, they had seen the *Continental* coming down the harbor very decidedly on their port bow, but they had a duty to perform in the management of their vessel, and they had no look-out forward—in itself a neglect of duty and a fault. Had such look-out been forward, in the discharge of his duty, he would have observed the *Continental* closely, and could have spoken effectively on the subject, and most probably, as

I think, the collision would have been avoided. The situation of the *Continental* as she took her course is so important, and the captain and pilot of the propeller, who are under heavy responsibility in this matter, must have seen it to be so important that they were under a strong motive to believe that what they saw a few minutes before had continued, though they did not themselves certainly see it.

Their testimony is totally overborne.

1. The look-out on the *Continental*, the wheelsman and the captain of the *Continental* are each positive that before they came to their course, S. W. ½ S., they passed beyond New Haven Light, from half to three-quarters of a mile. This would bring the propeller (running for that light) on the *Continental's* starboard bow. The instructions of the captain to the wheelsman to go beyond the light confirm this.

2. The captain, wheelsman and look-out, of the *Continental*, each testify that the propeller was in fact seen on the starboard bow of the *Continental*, and so continued until she ported and brought the vessels together. Assuming that they have the same interest, and are under the same responsibility, as the captain and pilot of the propeller, it becomes important that they are expressly corroborated by two persons who have no such motive. Two passengers, one of them an experienced mariner, and a Hell Gate Pilot, both expressly sustain them, and their testimony in detail carries with it conviction of its truth.

3. The important fact, that after the *Continental* took her course (S. W. ½ S.) according to the captain the green light of the propeller and not the red was visible, and so continued until the propeller changed her course across that of the *Continental*, is, in like manner, testified to and corroborated. If the propeller was heading (as her witnesses state) for the New Haven

Light, her green light, and not her red, must be visible to the *Continental* then being below that light-house.

On these points there are five witnesses, two of them disinterested, and intelligent observers. One of the latter testifying to his observations on two distinct specified occasions, at one of which his observation was made at the aft starboard gangway of the *Continental*, where he could not see the propeller at all unless she was to the starboard of the *Continental*, and there he saw her green and not her red light. I cannot hesitate to say that the evidence preponderates largely that during all the time after the *Continental* took her course the propeller was to her starboard, and on a course which presented her green light to their view.

In that relative situation the vessels could not collide if each kept her course. The act of the officers of the *Continental* in falling off, as the witnesses from both vessels agree that she did, was a measure of greater caution which removed all doubt. They were not crossing each other's track, but were on lines of perfect safety in which there was no just ground to apprehend collision until the propeller ported. If they had been crossing, still, as the *Continental* had the propeller on her own starboard side, it was the duty of the propeller to keep her course and leave the *Continental* to keep out of the way (Rules of Nav., Act 14 and 17). By suddenly porting, the propeller defeated the effect of the sheer of the *Continental* to the southward.

Upon no view of the subject which I can harmonize with the weight of the evidence can I impute any fault to the *Continental* whether she was bound to regard the vessel she had under observation as a steamer, or was justified in the mistake to which she was led by the want of proper lights.

The decree should be affirmed.

(A true copy.)

Attest, LOREN P. WALDO,
Clerk.

I continued - now, Dr
and no [illegible]

TRANSCRIPT OF RECORD